Supreme Court, U.S.
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10-213

IN THE

Supreme Court of the United States

ARLENE D. ROWLAND,

Petitioner,

v.

PRUDENTIAL FINANCIAL, INC.,
WACHOVIA CORPORATION, et al,

Respondents.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Ninth Circuit

Arlene D. Rowland, *Plaintiff-Petitioner Pro Se*
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(no telephone)

FOUR QUESTIONS PRESENTED

1. Whether dismissal of employment claims of retaliation and discrimination, deemed barred by the statute of limitations because Petitioner allegedly was not employed by Defendants, rather than examining the discrete and related incidents of the "charge period," perpetuates *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007) overturned by the Lilly Ledbetter Equal Pay Act of 2009, codified at 42 U.S.C. § 2000e-5(a) which states that an unlawful employment practice occurs, when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits or other compensation is paid. Congress provided retroactive application to May 28, 2007 for pending claims, including recovery of back pay for up to two years preceding the filing of the charge with the EEOC.

If so, would the continuing application of an interpretation overruled by Congress be a denial of Petitioner's due process guaranteed by the Fifth Amendment of the Constitution, and a denial of equal protection of Arizona State statutes prohibiting employment related retaliation and discrimination?

2. The Arizona District Court granted the employers' motions to dismiss timely reported EEOC Charges that Rowland timely filed in district court. Can an employee, or former employee, who files claims of retaliation, discrimination, and sexual harassment against an employer covered under Title VII and the ADA, be deemed time barred based solely on her status of not being employed by that specific employer on the date of the discrete violation when,

for example, *Burlington Northern & Santa Fe Railway v. White*, 126 S. Ct. 2405, 2414 (2006) held that the express anti-retaliation provision in Title VII, 42 U.S.C. 2000e-3(a), "extends beyond workplace-related or employment-related retaliatory acts and harm;" and *Robinson v. Shell Oil Company*, 117 S.Ct. 843 (1997) held that Title VII extends to former employees?

Sub-issue:

Does Rowland's status of not being employed with a specific employer on the specific date of the alleged violation also bar her claims under the Equal Pay Act, the Fair Labor Standards Act, the Family Medical Leave Act, and the Sarbanes Oxley Act of 2002, while she does in fact have the express statutory standing as either an employee, a former employee, or and "individual" covered under the Acts and timely filed claims against a covered employer, or an employee or agent of a covered employer? *For example*, the Equal Pay Act, a part of the Fair Labor Standards Act, has a two year statute of limitation and no pre-filing requirement, yet the district court decided that Rowland did "*not state a cognizable claim under FLSA. Instead, it appears to be another attempt at a Title VII gender based claim. As discussed above, such a claim is untimely.*" (Dismissal Order of July 2, 2007, Pg. 10-11, ¶5).

3. The district court, denied Plaintiff's **demand for a jury trial** of her employment claims, guaranteed by the United States Constitution, and the Arizona State Constitution, dismissing all of her

claims before the defendants ever filed "answers" to her complaint, and before admissible evidence was filed by any defendant with personal knowledge of the disputed facts to contradict Rowland's complaint allegations referencing her timely filed EEOC Charges and her complaints to other federal agencies, signed under penalty of perjury, and attached to her responses to defendants' motions to dismiss. Did it violate Rowland's federal and state constitutional rights to a jury trial, and her constitutional right of due process and uniform application of the law under the Fifth and Fourteenth Amendments when the judge, rather than a jury, decided the disputed and contradictory material facts of her privacy and employment claims, adopted defendants' counsels' self-serving opinions, unsupported by admissible evidence, and then presumed that her status as a "former employee" disqualified all claims, contrary to the unambiguous statute qualifying language as to "coverage," and "charge period?"

For one example, Rowland claimed that in 2004 Wachovia Corporation provided her an employee benefit plan, administered by Prudential Insurance Company, an entity of Prudential Financial, Inc., while she was employed by Wachovia Securities (a joint business venture of Prudential Financial, Inc. and Wachovia Corporation formed in July 2003), and that in a separate arbitration proceeding, Prudential Insurance Company released medical information, in her employee insurance file to Prudential Securities, Inc.'s counsel, defending her December 2002

employment claim of Title VII workplace discrimination, a month prior to service of disputed subpoenas which further lacked her signed authorization to release medical information, mandated by an Arizona statute. Then, just days after service of the subpoenas, while motions to quash remained pending, Prudential Insurance's medical consultant e-mailed a transcript of her medical information to a *"random woman"* who reported that she received Rowland's confidential medical and identifying information, just days before a scheduled arbitration of those same Title VII claims filed against Prudential Securities, Inc. The court decided *"arbitrators have the authority to issue subpoenas for the production of documents. Thus, the subpoena issued by NASD to PI-DMS is valid."* (July 2007 Order dismissing claims, Pg. 9, Lns. 26-28). *"It thus follows that when an alleged FCRA violation occurs in an arbitration proceeding, it is not a violation to comply with a subpoena for documents validly issued by the arbitrator(s)." "Accordingly, the Court will dismiss Plaintiff's Sixth Claim."* (*Id.* Pg. 10, Lns. 4-5). And, *"Plaintiff alleges that Defendants violated §521 of the GLBA. The GLBA, however, does not provide for a private cause of action ... these state law claims appear for first time in her Response to Movant's Motion to Dismiss. Such claims will not be considered by the Court as they were not alleged in the pleadings. Accordingly, the Court will dismiss Plaintiff's Seventh Claim."* (*Id.* Pg. 10, Lns. 13-22).

4. Did the court abuse its discretion and subject a former Arizona resident and employee to the unfair legal prejudice of a statutory residency bar, and time bar, by not retaining supplemental jurisdiction over her Arizona State statutory wage claim to an entitlement of treble damages and interest on wages Prudential paid late?

On July 2, 2007 when the district court dismissed Rowland's claims and ordered entry of judgment, it had discretion to retain supplemental jurisdiction over her Arizona State wage claim under A.R.S. § 23-355 for treble damages of a statutory right under A.R.S. § 23-351 to receive "all wages due" but underpaid to her from November 2002 through December 2003, within the meaning of "wages" as defined by A.R.S. § 23-350. This court claim was filed on October 26, 2004, while wages continued to be withheld. Prudential corrected the deficiencies and paid her $34,320.50 on January 7, 2005, so that the actual late payment adjustment was proof that she had been underpaid constituting a *per se* violation of A.R.S. § 23-351. Because Rowland permanently moved to California in September 2006, she was not a resident of Arizona on July 2, 2007 when the court dismissed her federal claims which presented a statutory bar to a nonresident, precluding the filing of a wage claim in an Arizona State court that may have been tolled for the time the district court had supplemental jurisdiction over the wage claim until it granted Prudential's April 14, 2005 motion (D.Dkt. 24) to dismiss claims twenty-six months later.

PARTIES TO THE PROCEEDING

Petitioner, Arlene D. Rowland, employed as a registered Financial Advisor at Prudential Securities, Inc. from April 1996 until Prudential Financial, Inc. transferred her to its new joint venture, Wachovia Securities in July 2003, was the plaintiff in the district court and appellant in the court of appeals.

Respondents Prudential Financial, Inc. and Wachovia Corporation were the corporate defendants, that formed a joint venture, Wachovia Securities, a registered broker-dealer, in July 2003, in the district court complaint and the first amended complaint, and were the appellees in the court of appeals.

The District Court denied Petitioner-Plaintiff Rowland's uncontested motion for leave to file a corrected and lodged Second Amended Complaint (May 6, 2005) (D.Dkt.40), after an attorney briefly appearing for her filed the amended complaint on April 11, 2005 (D.Dkt.20), and removed "Unknown Defendants" from the caption box and failed to list the additional defendants originally served the complaint and summons (Proof of Service filed at D.Dkts.16, 19):

Prudential Insurance Company of America;
Prudential Securities, Inc.;
Prudential Securities Group, Inc.;
Prudential Equity Group, Inc.;
Prudential Equity Group LLC;
Wachovia Securities, LLC;
Wachovia Securities Financial Network, LLC;
Wachovia Securities Financial Holdings, LLC;
Wachovia Prudential Financial Advisors, LLC;

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Arizona Constitution

Art. 2, §23- "The right of trial by jury shall remain inviolate."

Art. 2, §4 - "No person shall be deprived of life, liberty, or property without due process of law."

Art. 2, §11- "Justice in all cases shall be administrated openly, and without unnecessary delay."

Art. 2, §8 - Right to Privacy- "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

Art. 18, §3 "It shall be unlawful for any person, company, association, or corporation to require of its servants or employees as a condition of their employment, or otherwise, any contract or agreement whereby such person, company, association, or corporation shall be released or discharged from liability or responsibility on account of personal injuries which may be received by such servants or employees while in the service or employment of such person, company, association, corporation, or the agents or employees thereof; and any such contract or agreement if made, shall be null and void."

CONSTITUTION PROVISIONS, TREATIES, STATUTES AND REGULATIONS - VERBATIM

Pertinent text of cited statutes are set out verbatim in footnotes on the same page as cited in the Petition.

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE BY COURTS OR ADMINISTRATIVE AGENCIES

Rowland v. Prudential Financial, Inc.,
Slip Copy, 2010 WL 76439, (Not Selected for publication in the Federal Reporter), C.A.9 (Ariz.), January 11, 2010 (NO. 07-16358) MEMORANDUM affirming.

Rowland v. Prudential Financial, Inc.,
Not Reported in F.Supp.2d, 2007 WL 1893630, D.Ariz., July 02, 2007 (NO. CV04-2287PHX-EHC); Dismissal.

Notice of Appeal filed: July 23, 2007 (D.Dkt.145)
Clerk's Judgment filed: July 2, 2007 (D.Dkt.144)
Order: dismissing claims: July 2, 2007 (D.Dkt.143)
Order denying Pla.'s 3rd Correct Amended Complaint December 14, 2006 (D.Dkt.109)
Order: denying Pla.'s 2nd Correct Amended Complaint September 14, 2006 (D.Dkt.105)
Transcript of April 24, 2006 Status Hearing (D.Dkt.89)
Order: dismissing Wachovia Corporation: April 28, 2006 (D.Dkt.83)
Amended Complaint filed April 11, 2005 (D.Dkt.20)
Complaint filed: October 26, 2004 (D.Dkt.1)

EEOC Charge #350-2004-04353 filed: July 6, 2004
EEOC Notice of Suit Rights dated: July 30, 2004
Arizona Notice of Right to Sue dated October 14, 2004

EEOC Charge #350-2005-00893: November 30, 2004
EEOC Notice of Suit Rights dated: January 7, 2005
Arizona Notice of Right to Sue: May 31, 2005

EEOC Charge #350-2005-3211 filed May 10, 2005
EEOC Notice of Right to Sue: June 8, 2005
Arizona Notice of Right to Sue: January 23, 2006

EEOC Charge #540-2006-02124 filed May 15, 2006
EEOC Notice of Right to Sue: September 6, 2006
Arizona Notice of Right to Sue: March 16, 2007

EEOC Charge #350A300777 December 27, 2002
EEOC Notice of Right to Sue: January 8, 2003
Arizona Civil Rights Division letter: January 10, 2003

National Association of Securities Dealers Dispute Resolution, Inc. NASD Case No. 03-00179
Uniform Submission Agreement to Arbitrate EEOC Charge of December 27, 2002 signed February 6, 2003
NASD Statement of Claim filed: February 2003
NASD granted Plaintiff's motion for dismissal without prejudice for consolidation with federal court claims on June 17, 2005; NASD "Award" issued April 21, 2006; Court "stay" lifted April 28, 2006 (D.Dkt.83)
** (NASD *now known as* FINRA) **

U.S. Department of Labor - (Executive Order 11246, Section 503 of the Rehabilitation Act of 1973) OFCCP Complaint of Retaliation, Discrimination, SOX violations - filed July 9, 2004; U.S. DOL Letter of July 13, 2004 - referred to EEOC under "MOU;" received by EEOC PHX Legal on November 18, 2004.

U.S. Department of Labor (Executive Order 11246,

Section 503 of the Rehabilitation Act of 1973) OFCCP Complaint No. I00120905 of retaliation, discrimination, SOX violations - filed September 2, 2004; U.S. DOL Letter of Sept. 14, 2004 - referred to EEOC, MOU.

U.S. Department of Labor, OSHA Sarbanes Oxley Act Complaint filed December 3, 2004; U.S. DOL-OSHA Letter of Acknowledgement dated December 16, 2004; DOL-OSHA Regional Office Letter of December 17, 2004 (Ricci - Regional Supervisor - Investigator).

STATEMENT OF BASIS FOR JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 2101(c) because Appellant petitions within ninety days under 28 U.S.C. § 2106 to have the Supreme Court reverse the entry of the final "Memorandum" disposition of the Ninth Circuit Court of Appeals Case No. 07-16358 (*Arlene D. Rowland v. Prudential Financial, Inc., Wachovia Corporation, et al*) filed by the clerk on **January 11, 2010**, affirming Arizona District Court's final decision and judgment of **July 2, 2007** dismissing all claims of Case No. CV '04-02287-1-PHX-EHC, which was timely appealed on **July 23, 2007** to the Ninth Circuit, within thirty days under 28 U.S.C. § 2107(a), 28 U.S.C. § 1291, and 42 U.S.C. § 2000e-5(j). This is a petition for reversal of the district court dismissal of all claims and direction for further proceedings before a jury trial on the merits of Plaintiff's employment discrimination, sexual harassment, retaliation, privacy and wage claims filed in the Arizona District Court on October 26, 2004, with amendment.

JURISDICTION (continued)

The Arizona District Court had original jurisdiction of the this civil rights action arising under the Constitution and United States laws, 28 U.S.C. § 1331; and Acts of Congress regulating commerce, 28 U.S.C. § 1337; and Acts of Congress providing for protection of civil rights under 28 U.S.C. § 1343 with respect to deprivation of rights, privileges, and immunities secured by the Constitution and federal laws, and 42 U.S.C. § 2000e-5(f)(3) of Title VII. The District Court also had supplemental jurisdiction under 28 U.S.C. § 1367 and Article III of the United States Constitution because Petitioner exhausted required administrative remedies; and the Arizona State claims form part of the same case and controversy of employment related discrimination, sexual harassment, retaliation, and privacy violations.

CONCISE STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals affirmation of the Arizona District Court's orders and final judgment dismissing all of Arlene D. Rowland's privacy and employment discrimination, sexual harassment and retaliation claims dramatically conflicts with well established United States Supreme Court decisions, prior Ninth Circuit decisions, and statutory language of Acts of Congress that set forth filing predicates, statutes of limitations, and requirements for standing. The District Court, and the Ninth Circuit's "processing" of this Pro Se employment civil rights claim grossly deviates from the accepted and usual course of judicial proceedings, as to call for an exercise of the United States Supreme Court's supervisory power of a case that the defendants have opportunistically caused to linger in federal court for five and a half years, while its subject business entities dissolve or reorganize, without ever a hearing on the merits.

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A jury trial demand was denied, defense counsel's opinions were adopted as facts, and the court granted the employer's Federal Rules of Civil Procedure Rule 12(b) motions to dismiss all claims. The Fifth Amendment of the Constitution and the doctrine of *stare decisis* requires uniform application of the law. Here, the court shielded employers, their agents, and business entities from accountability for civil damages, and denied equitable relief and dismissing all claims based on immaterial employment dates, and Rowland's status as a "former employee." Both lower courts erroneously determined that she was employed by Prudential Equity Group, LLC ("PEG"), a firm that never employed her. Without statutory authority, the court limited the employer's and their agent's liability to the time that her

previous employer was registered as a broker-dealer to dismiss her claims as time barred. These decisions conflict with the statutory "charge period," reinforced by the Lilly Ledbetter Fair Pay Act of 2009, enacted by Congress to clarify statutory time limits and coverage of Title VII and the ADA.

The district court dismissed prior to discovery, and denied Plaintiff an evidentiary hearing motioned for by first dismissing an employer for lack of personal jurisdiction in April 2006. On July 2, 2007, the court dismissed claims deemed time barred contrary to unambiguous statute; then dismissed her remaining federal and state claims for failure to state a claim by arbitrarily deciding that a *former employee* could have no standing under the relevant statute; then dismissed her privacy claims which did not require any employment relationship; then dismissed claims the court deemed had no private right of action contrary to clear statutory language granting a private right of action; and finally dismissed the remaining defendant because no claims remained.

Background Facts

Rowland was hired by the Princeton, New Jersey office of Prudential Securities, Inc. (brokerage firm) as a financial advisor on April 15, 1996. She had graduated with a Bachelor of Science in Business Administration, with a 4.0 grade-point average ("A"), and ranked first in her graduating class. By October 2006, she was licensed to sell investments and securities in 19 states, was registered with the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers ("NASD"), AMEX, and CBOE; and maintained Series 7, 63 and 65 professional investment licenses. She had a "clean" NASD CRD industry record, with no client

investment complaints, no statutory violations, and no regulatory violations.

Rowland received excellent performance reviews and qualified for the firm's advanced training, such as the "Masters Program;" "Investment Planning for Women" Certificate Program; the "Women's' Forum;" and the "Core Broker" Program; all supplemental career development training predicated on top performance. Compl.¶68.

Based on revenue production, assets under management, and her length of service, she was classified as a first quintile financial advisor, meaning that she was within the top 20% of all Series 7 licensed financial advisors nationwide; and she earned awards for exceeding firm goals, including a substantial amount of bonus deferred compensation. In January 1999 when her husband retired from his twenty-five year career in law enforcement with the Trenton, New Jersey Police Department, she transferred to the Scottsdale, Arizona branch office of PSI, because of his health. After the move, she retained nearly all of her clients' accounts. Am.Compl.¶19.

Prudential Financial, Inc. transferred substantially all of its PSI employees to Wachovia Securities on July 1, 2003, retaining 38% ownership, after it formed a joint business venture with Wachovia Corporation. Rowland remained employed with Wachovia Securities, LLC until she was terminated in October 2007 just days after she successfully completed a national regulatory continuing education program and passed the required licensing test. Am.Compl.¶7.

Complaint Related to December 27, 2002 EEOC Charge

On December 27, 2002, Rowland filed the first of

a series of discrimination, sexual harassment, and retaliation charges with the Equal Employment Opportunity Commission ("EEOC"), the Arizona Civil Rights Division, and the United States Department of Labor ("DOL"), alleging unlawful workplace discrimination tolerated in the Scottsdale, Arizona branch office. The following summary description quotes her court complaint, as amended.

Rowland complained of "managers and their delegates withholding marketing opportunities, business funding and support, [managers] kept secret management and other promotional opportunities, withheld equitable distribution of client accounts, orphaned accounts with investable assets, withheld training and licensing opportunities; all while providing those opportunities to the young, male financial advisors." Am.Compl.¶20. "Rowland qualified for promotional opportunities that included monthly salaries, [but] was denied consideration for multiple managerial opportunities, while men with lesser qualifications were selected for those positions." Am.Compl.¶ 12.

She encountered "a hostile work environment tolerated by at least, local and regional managers despite her written and verbal complaints and notification, as well as complaints by other female brokers in the same Scottsdale branch office." Am.Compl.¶21. "Male brokers were 'entertained' after conference and/or seminar dinners, with firm or business-partner funding at "male-oriented clubs" of a sexually explicit nature, while Rowland and other females at the same out-of-town firm conferences had no alternate after dinner activities. On occasion, Rowland and other female broker attendees would specifically complain to the conference planner, yet no alternate

firm-funded activities were ever planned for the female brokers....such "entertainment" was paid for with expense accounts of mutual fund wholesalers of Prudential or....firms that have selling agreements with Prudential. Manager Zirbel openly tolerated workplace hostility and started each day by distributing his offensive newsletter....examples follow...."
Am.Compl.¶58 Exhibits-Newsletters:

> "Nice dye job you puke...so my advice to you is lose the Gretian Formula & get back on the golf course ..."(6/26/2002 comments with arrow to picture of Charles Schwab.)
>
> "Defending your honor against a succession of imbecilic character assassinations is at times a major pain in the ass." (9/4/2002; referring to EEO complaints made by branch employees.).
>
> "Karen's gone and I'm happy, Hey love, Hey love, Karen's gone. Yeh! No more whining & complaining. Yeh, No more violin playing ... Karen's gone and I'm happy..." 12/17/2001
>
> Illustration of men's underwear briefs with noticeable bulging...."Does this market make you feel like you lost your.....give you downside protection....Okay boys and girls, clear your calendar for this one. It ought to be juicy!" 8/7/2001.
>
> Illustration of Middle-Eastern men with turbans a month after the 9-11 tragedy: "Why is this guy so mad? #1 His squalor hut was just leveled by a cruise missile....#3 His copy of "Turban Monthly" was taken from his mail box." 10/10/2001.

"The discrimination and a hostile workplace caused Rowland's sales production ranking to drop to the third quintile, hindered her career advancement, and

caused emotional distress." Am.Compl.¶22. Rowland's W2 income at PSI in the year prior to her transferring to the Scottsdale branch office where she encountered the discriminatory and hostile work environment, was approximately $92,000. (Compl.¶68). "Beginning in 2000, other females in the branch office filed formal EEO complaints. Prudential Human Resources and Prudential's legal staff conducted interviews, investigations, and training sessions in the Scottsdale office. Donna Dorn of Human Resources interviewed Rowland. Subsequent to the interviews, Rowland and other females, were retaliated against..." Am.Compl.¶23.

Complaint Related to July 6, 2004 EEOC Charge

"On July 6, 2004, Rowland timely filed a second charge" with the EEOC (Am.Compl.¶2) and complained that "on April 7, 2004 an employee of [Prudential Insurance] printed out at least 29 pages of Rowland's medical information....date stamped April 7, 2004... purportedly to respond to a subpoena .... served on May 4, 2004....responded to on May 14, 2004." Am.Compl.¶24. "Rowland objected to releasing medical records....on February 27, 2004....May 5, 2004....yet [Prudential Equity Group] delivered the subpoenas despite her attorney's timely objections. Rowland never waived doctor-patient confidentiality. Rowland never signed a "Medical Authorization"....was promised that her medical information 'would not be shared by any other party including her employer' (Notated in [Prudential Insurance] phone log....by Laura Hannan on 1/27/03)." Am.Compl.¶25.

"On May 17, 2004, a partial transcript of Rowland's medical record information, was e-mailed to a random woman by [Prudential's medical consultant]. (Am.Compl.¶28). "When Rowland phoned on May 28,

2004 for the HIPAA contact address to inquire about disclosure of her medical records and to file a written privacy complaint....a [Prudential Insurance] employee told Rowland that she should not be calling since Rowland had an attorney and was suing....and disconnected Rowland's call." Am.Compl.¶29. "Defendants have unlawfully disclosed Rowland's communicable disease information, including HIV test results in violation of A.R.S. §§ 36-661-664." Am.Compl.¶88.

"Over many years, Rowland was able to create an automatic $22,000 recurring annual stream of revenue, in addition to revenue from commission sales from her previous sales work as a Financial advisor....[PSI] and [Wachovia Securities have not paid Rowland the recurring revenue since September 6, 2002." (Am.Compl.¶32). "Wachovia has not responded to one single written privacy or employment complaint made by Rowland and has in fact opened her mailed correspondence and then had the U.S. Postal Service return her mail marked undeliverable." Am.Compl.¶27.

On February 17, 2005 the new Scottsdale Branch Manager called Rowland and told her that he needed her office space and that he had made arrangements to have her office packed and inventoried [while she was on an approved unpaid medical leave of absence]. He asked Rowland if she would prefer to have him store her office items at the branch or have them delivered to her house. She...planned to return to work and requested that the items stay at the branch office...the inventory was incomplete, and missing every single item of evidence of her EEO claims." Am.Compl.¶34. The items were "delivered to her house, contrary to her elected option...."

"Rowland made written...requests on at least February 27, 2004, March 24, 2004, April 12, 2004, May 24, 2004, for assistance with return to work and possible accommodation with a new position within Prudential or Wachovia for which she qualifies by experience, education, and professional licenses...Her requests for accommodation have been ignored, yet [Prudential Insurance] wrote "It appears you originally went out of work due to work environment stressors and the information supports you should be capable of returning to your regular occupation perhaps with a different employer."" Am.Compl.¶35.

"By delaying and ignoring Rowland's requests for assistance in resolving the workplace issues and assistance with return to work, Defendants are interfering with Rowland's client relationships and effectively taking possession of her client 'book of business'...while Defendants realize approximately $200,000 annual revenue on assets under management based on Rowland's client relationships cultivated over many years." Am.Compl.¶¶36-37.

"Rowland was harassed and treated in an hostile manner by....Human Resources when she made inquires regarding the miscalculation of her wage benefit base...." and "Joe Tierney, Vice President of Benefits told Rowland that he reviewed her "Case" prior to returning a call. After a 22 month delay, and repeated requests for proper calculation of the previous payments, PI sent Rowland a letter....."We have calculated an underpayment of benefits in the amount of **$34,320.50** for the period November 6, 2002 through December 31, 2003"...."she filed an EEOC complaint just two months prior to the 'miscalculation.' " Am.Compl.¶38. Joe Tierney ... purposely withheld proper wage information forcing 'an unreasonable or bad faith wage dispute' in

violation of A.R.S. § 23-351. Am.Compl.¶63.

"Male broker dates of hire [were] misstated so as to give the appearance of more seniority, the Manager withheld clients' investment accounts from broker assignment and stockpiled these "asset" awards for his newly recruited male brokers, and approximately 30% of the brokerage client's assets to be distributed to Financial Advisor's control, using the HARP system were not accounted for, indicating a tracking system by-pass to minimize the detection of discriminatory practices. At least one newly hired male broker was credited with 2 years of false [PSI] revenue production statistics in reports, yet the broker was not employed by PSI during those two years according to the NASD licensing database." Am.Compl.¶40.

On March 25, 2004 "when she arrived home from the failed mediation there was a mailed cancellation notice of her employee benefit insurance plans (dental, vision, accident and life insurance for herself, her spouse, and a dependant).....retroactive to February 28, 2004." Compl.¶35. "Her spouse's cancellation notification indicated that [she] was "terminated." Compl.¶36.

Complaint Related to November 30, 2004 EEOC Charge

"On November 30, 2004, Rowland timely filed a third charge of discrimination and retaliation with the EEOC." Am.Compl.¶3. On September 30, 2004, Rowland received a form letter from Wachovia advising of a distribution of approximately 756 vested shares of a mutual fund valued at approximately $19,000 from an employee investment account that Rowland earned [as bonuses] while employed by PSI, for achieving and exceeding employment sales goals in previous years.....Rowland contacted [Wachovia Securities] to sell

the shares, requesting a check be mailed for the approximate $11,900 proceeds on the [market] settlement date. Typically an automated process, yet Rowland did not receive the funds for three weeks as [Wachovia Securities] employees kept telling her that her account had been closed and the check did not go out. The account was reportedly opened, then closed, then opened again, repeatedly, causing the $11,900 to remain at [Wachovia Securities]." Am.Compl.¶41.

Summary of Basis for Dismissal of Court Claims

Rowland filed her second EEOC Charge of July 2004 in Arizona District Court on October 26, 2004. She amended this court complaint with her third EEOC Charge of November 2004 on April 11, 2005. Her first EEOC Charge of December 2002 was submitted for private arbitration in February 2003 and prior to any hearing on the merits, it was dismissed without prejudice for consolidation with this court complaint under an arbitration provision entitling a complainant to protect rights and seek remedies in court, after PSI became a defunct business entity.

I. STANDARD FOR DISMISSAL OF CLAIM

The Ninth Circuit reviews de novo a district court's disposition of a motion to dismiss pursuant to Rule 12(b)(6). "In determining whether a complaint states a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. A complaint may not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of claims which would entitle relief." ***Barnett v. Centoni***, 31 F.3d 813, 816(9th.Cir.1994)(*per curiam*); ***Gumataotao v. Dir. of Dep't of Revenue & Taxation***, 236 F.3d 1077, 1083(9th.Cir.2001)(district court may not

consider materials outside the complaint and the pleadings).

The court may consider materials properly submitted as part of the complaint, as well as "document[s] the authenticity of which [are] not contested, and upon which the plaintiff's complaint necessarily rel[y]," even if they are not attached to the complaint, ***Parrino v. FHP, Inc.***, 146 F.3d 699, 706(9th.Cir.1998).

"The court may not resolve contested factual issues where the facts are so entwined with facts central to the parties' claims and defenses, the court must deny the motion to dismiss because otherwise the jurisdictional motion would provide a means of allowing the court to decide the case on the merits without requiring the defendants to meet evidentiary standards of a motion for summary judgment;" ***Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.*** 711 F.2d 138, 139(9th.Cir.1983). Thus, "the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." ***Anderson v. Liberty Lobby,*** 477 U.S. 242, 249(1986).

A court can consider only admissible evidence in ruling on a motion for summary judgment; ***Orr v. Bank of America***, 285 F.3d 764, 773(9th.Cir.2002). A verified complaint may be treated as an affidavit to oppose summary judgment to the extent it is 'based on personal knowledge' and 'sets forth specific facts admissible in evidence.' ***Lopez v. Smith***, 203 F.3d 1122, 1132(9th.Cir.2000)(*en banc*).

A. Defendants' Conclusory FRCP Rule 12(b) Motions to Dismiss Conflict With the Facts of Plaintiff's Admissible Evidence

Wachovia Corporation falsely instructed the court that there was no employment relationship and the court dismissed Wachovia for lack of personal jurisdiction,[1] while Title VII authorizes suit "in any judicial district in the State in which the unlawful employment practice is alleged to have been committed." 42 U.S.C. 2000e-5(f)(3); ***Passantino v. Johnson & Johnson,*** 242 F.3d. 1015(9th.Cir.2000)(venue is proper in both the forum where the employment decision is made and the forum in which that decision is implemented or its effects are felt). Rowland filed copies of her W2's, pay checks, employee benefit program mail, and a letter mailed from Wachovia that expressly stated that she was employed by "Wachovia Corporation." Without a defendant affidavit, Wachovia's counsel explained away Rowland's admissible evidence as mistaken mailings in their reply to her opposition to dismissal. Rowland later motioned to join Wachovia, producing new evidence. *"The Court's dismissal of Wachovia Corporation for lack of personal jurisdiction cannot be vacated with a Rule 19(a) motion*

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[1] **42 U.S.C. § 2000e-5(f)(3)** "Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 [of the United States Code], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. [Sec. 706].

for joinder." (Dism.Order-Pg. 5:8-9; Dkt.143).

The court further relied on defense counsel's unsupported motions, stating: "*Court will deny Plaintiff's Motion for Joinder (Dkt.118) of Prudential Securities, Inc., *** Prudential Equity Group, Inc., Prudential Equity Group, LLC, *** Prudential Insurance Company of America, Wachovia Securities LLC, *** and Thomas Zirbel, pursuant to Federal Rule of Civil Procedure 19(a)*" (Dism.Order-Pg.4:6-11) because "*Plaintiff has not demonstrated any grounds for joining these additional defendants.*" (*Id.* Pg.4:21-22).

The court made factual determinations as to the nature of her "intent" regarding her privacy violation claims and declared: "*When Plaintiff chose the NASD forum to arbitrate her claims, she voluntarily contracted to be subject to the NASD Code of Arbitration*" (Dism.Order-Pg.9:23-24) and "*arbitrators have the authority to issue subpoenas for the production of documents***the subpoena issued by NASD to PI-DMS is valid*" (*Id.* Pg.9:26-28) and "*dismissed Plaintiff's Sixth Claim" under the FCRA,* (*Id.* Pg.10:4-5). The court dismissed "*Plaintiff's Seventh Claim*" under the GLBA (*Id.* Pg.10:13-22), another privacy right of action enforceable under Arizona statute stating: "*Although Plaintiff asserts state law claims that provide a private right of action, she does not do this in the First Amended Complaint. Rather, these state law claims appear for [sic] first time in her Response to Movant's Motion to Dismiss.*" (*Id.*Pg.8:14). The Complaint asserted state law claims:

> "PI failed to safeguard the confidential and identifying information in Rowland's medical file in accordance with Federal privacy standards and established security standards

> and procedures, by contracting with a doctor who neglected to implement physical, electronic, and procedural safeguards while conducting a medical review in order to determine continued qualification for an employee insurance benefit. (A.R.S. §20-2113)." Am.Compl.¶28. "Defendants have unlawfully disclosed Rowland's communicable disease information, including HIV test results in violation of A.R.S. § 36-661-664." Am.Compl.¶66.

Rowland alleged in her Amended Complaint that she timely filed charges of unlawful employment discrimination, sexual harassment and retaliation with the EEOC and the U.S. DOL; and that she received the "Notice of Right to Sue" for each EEOC Charge and letters from the DOL. Am.Compl.¶¶1-4,17. Copies of EEOC Charges attached to her responsive opposition to the defendants' motions to dismiss were executed below a declaration that she "signed under penalty of perjury that the above is true and correct" in the presence of EEOC representatives in Phoenix, Arizona. The EEOC Charges[2] contain incident details and are admissible evidence, based on her personal knowledge. The 2003 NASD Statement of Claim to arbitrate her December 2002 EEOC Charge, signed under oath in February 2003, in the district court record is also admissible evidence. *Appendix:* EEOC Charges.

Notably, the **Party** Defendants of this case never filed any declarations or affidavits and a non-party

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[2] "Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. **42 U.S.C. Sec. 2000e-5(b)** [Sec. 706 of Title VII].

attorney's self-serving affidavits attached to a motion to dismiss claims are inadmissible hearsay lacking personal knowledge of the allegations of Rowland's complaint, because "the affiant must be a person through whom the exhibits could be admitted into evidence." ***Canada v. Blain's Helicopters, Inc.***, 831 F.2d 920, 925(9th.Cir.1987). The court should "treat the opposing party's papers more indulgently than the moving party's papers." ***Lew v. Kona Hosp.***, 754 F.2d 1420, 1423(9th.Cir.1985). Where the plaintiff states that the facts in the complaint are true under the pains and penalties of perjury [***Schroeder v. McDonald***, 55 F.3d 454,460n.10(9th.Cir.1995)], or avers that they are "true and correct," [***Johnson***, 134 F.3d at 1399], the pleading is "verified." Here the district court granted defendants' unsupported motions to dismiss.

In ***Baker v. McNeil Island Corrections Center***, 859 F.2d 124,129 (9th.Cir.1988) defendant's motion for dismissal pursuant to Rule 12(b)(6) for failure to state a claim had an affidavit attached and the Ninth Circuit explained that the "Corrections Center is not entitled to summary judgment against a pro se litigant merely by attaching an affidavit to its motion. We have observed that courts are reluctant to grant summary judgment for defendants in Title VII cases where the proof is in the hands of the alleged wrongdoers." *citing* ***Lutcher v. Musician's Local 47***, 633 F.2d 880-883(9th.Cir.1980). "Review is limited to the contents of the complaint." *Id.* In civil rights cases, where petitioner is pro se, the court has an obligation to construe the pleadings liberally and to afford petitioner any benefit of the doubt. ***Bretz v. Kelman***, 773 F.2d 1026, 1027(9th.Cir.1985)(en banc).

B. SUMMARY JUDGMENT DISMISSAL UNSUPPORTED BY ADMISSIBLE EVIDENCE

For defendants' motions to dismiss to convert to summary judgment,[3] they had to provide "significant probative evidence tending to support" their allegations. ***First Nat'l Bank of Ariz. v. Cities Serv. Co.***, 391 U.S. 253(1968). Defendants failed to present any evidence to support their dismissal motions. Rule 56(e) of the Federal Rules of Civil Procedure requires that a proper foundation be laid for evidence considered on summary judgment. ***Hal Roach Studios, Inc. v. Richard Feiner***, 896 F.2d 1542, 1551(9th.Cir.1990).

II. CLAIMS MET THE STATUTE OF LIMITATIONS FILING REQUIREMENT OF TITLE VII & THE ADA, ARIZONA CIVIL RIGHTS ACT, ARIZONA WAGE STATUTE

The Ninth Circuit affirmed the district court's order stating:

> "Plaintiff filed discrimination and retaliation charges with the EEOC on July 6, 2004 and November 30, 2004. Plaintiff's employment with PSI, however, ended on July 1, 2003 when PSI ceased to exist as a legal entity. These charges were thus untimely filed with the EEOC as against Movants by more than two months." (Dism.Order-Pg.8:7-11). "... the Court will dismiss Plaintiff's First through Fourth Claims." (Pg. 9:2).
>
> "Plaintiff's Fifth claim arises from state law cause

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[3] "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.Rule Civ.Proc. 56(c).

> of action...barred by the statute of limitations..... Plaintiff's claim under AEPA also fails because it is untimely. A plaintiff must file suit within one year after the cause of action accrues. (A.R.S. 12-541). Plaintiff's employment relationship with PEG terminated on July 1, 2003 and thus provides the last date a cause of action could have accrued against Movants. This action was filed in October 2004, approximately three months past the appropriate date." (*Id.* Pg. 9:11-16).

The Supreme Court held in ***Burlington Northern & Santa Fe Railway Company v. White***, 126 S. Ct. 2405(2006) that "[a]n employer can effectively retaliate against an employee" for exercising his or her protected rights "by taking actions not directly related to his employment or by causing him harm *outside* the workplace." *Id.* at 2412. The proper analysis is whether the employer's conduct "well might have dissuaded a reasonable worker from making or supporting a charge of discrimination," *Id.* at 2415. To warrant trial, plaintiff need only show that a jury could conclude that a reasonable employee in Rowland's shoes would have found the defendants' conduct sufficiently adverse that she well might have been dissuaded by such conduct from making or supporting a charge of discrimination.

There is no doubt that a reasonable employee could find such a combination of threats and actions taken by employers with the design of imposing both the economic harm of withholding wages earned while on an unpaid medical leave of absence, cancelling employee insurance benefits, charging her the **$1,800** mediator fee to mediate employment disputes otherwise guaranteed paid by her employer's benefit program, filing a lawsuit against her to collect **$137,795.82** that her past employer

spent to defend her EEO claims, all while their business partner refused her return-to-work; and the psychological and reputation harm from exposure of her extremely confidential medical record information is sufficient to dissuade her, or other employees, from making or supporting a charge of discrimination. Indeed, the courts have found lesser conduct to suffice under similar legal standards.

A. "LEDBETTER FAIR PAY ACT" REINFORCED CLAIM ACCRUAL DATE

Title VII makes it an "unlawful employment practice" to discriminate "against any individual with respect to his compensation***because of such individual's***sex." 42 U.S.C. § 2000e-2(a)(1). One instance in which an actionable unlawful employment practice occurs is "when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid." 42 U.S.C. § 2000e-5(e)(3)(A).[4]

Under Title VII a claimant must file a charge of discrimination within 180 days "after the alleged unlawful employment practice occurred," unless the

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[4] "For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when **an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid,** resulting in whole or in part from such a decision or other practice." 42 U.S.C.A. § 2000e-5(e)(3)(A).

"person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice," in which case the claimant has 300 days to file his charge with the EEOC. 42 U.S.C. § 2000e-5(e)(1). The EEOC and Arizona are parties to a work-sharing agreement, whereby a charge filed with the EEOC will automatically be deemed filed with the State. The charge will be deemed "initially instituted" with the state agency within the meaning of Title VII. ***Bouman v. Block*** 940 F2d 1211, 1220(9th.Cir.1991).

Generally, the statute of limitations begins to run when the plaintiff knew or should have known all of the essential elements of its applicable cause of action. ***Louisiana-Pacific Corp. v. ASARCO, Inc.***, 24 F.3d 1565, 1580(9th.Cir.1994). ***National R.R Passenger Corp. v. Morgan,*** 536 U.S. 101, 105(2002), considered "whether, and under what circumstances, a Title VII plaintiff may file suit on events that fall outside the statutory time period." ***Morgan*** considered applicability of the continuing violation doctrine to discrete acts, specifically equal pay violations, by reaffirming the statement the Court made in ***Bazemore v. Friday,*** 478 U.S. 385(1986), that each discriminatory paycheck was a separate discriminatory act that could give rise to a Title VII action. Each discrete discriminatory act starts a new clock for filing charges alleging that act and must be filed within the 300-day time period after the discrete discriminatory act occurred. ***Morgan***, 536 U.S. at 112.

Under the continuing violation doctrine, if a plaintiff has filed a charge of discrimination "that is timely as to any incident of discrimination in furtherance of an ongoing policy of discrimination, all claims of acts of discrimination under that policy will be timely even if they would be untimely standing alone." ***Anderson v***

Reno, 190 F.3d 930(9th.Cir.1999)(continuing violation when acts before limitations period were part of pattern of discrimination that also existed within limitations period).

Based on the continuing violation doctrine, Rowland's Title VII and ADA pay discrimination claims are timely as to the discrete discriminatory acts of the "charging period" dating back to March 2, 2002 (300 days before she filed her first EEOC Charge on December 27, 2002). Since the March 2002-December 2002 ("charging period") incidents are similar and related to "unlawful employment practices with regard to discrimination in compensation" occurring prior to the "charging period," PSI's liability accrues to December 27, 2000 and Rowland is entitled to relief that includes "recovery of back pay for up to two years preceding the filing of the charge" on December 2002. 42 U.S.C. § 2000e-5(3)(A).[5]

PSI's March 2003 withholding of correct wage data causing a miscalculation and underpayment of wages from November 2002 - December 2003 (adjusted and paid in January 2005), and Wachovia's failure to return her to work after an approved medical leave of absence, and Prudential Financial's withholding of a corporate-wide former-employee benefit of the

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[5] **42 U.S.C. § 2000e-5(e)(3)(A)** "In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), **including recovery of back pay for up to two years** preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge."

mandatory "Roads to Resolution" yet requiring a March 2004 mediation which she had to pay the mediator approximately $1800, and Prudential's later bill for its defense costs of **$137,795.82** while the firm's written policy guarantees no such costs, and the lawsuit that Prudential filed to collect its unsubstantiated legal defense bill, all fall within the "charging periods" of her July 2004, November 2005, May 2006 EEOC Charges. and the defendants' failure to pay, respond, correct, waive, assist, and employ are "compensation decisions."

To determine the timeliness of Rowland's EEOC Charge and this lawsuit, the district court had to identify precisely the "unlawful employment practice" in the "charging period." Rowland's claims were timely filed because she continued to file Charges of ongoing discrete incidents of discriminatory treatment and retaliatory acts with the EEOC, and the defendants were served with written "notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice)***within ten days thereafter" by the EEOC pursuant to 42 U.S.C.A. § 2000e-5(e)(1).

In ***Ledbetter v. Goodyear Tire & Rubber Co.***, 550 U.S. 618(2007), the Supreme Court held that a claimant alleging discrimination based on a pay-setting decision must file a charge with the EEOC within 180 days, or 300 days, after the discriminatory decision was made. The Court rejected the plaintiff's claim that she could recover based on a later paycheck she received that would have been larger had the prior discrimination not occurred. The Court ruled that the continuing effects of a past employment decision, which was adopted with discriminatory intent, do not transform a subsequent employment act, unaccompanied by discriminatory intent, into a present violation.

However, the Ledbetter decision prompted Congress to pass the "**Lilly Ledbetter Fair Pay Act of 2009**," [6] to restore the law that was in place prior to the ***Ledbetter*** decision. This Act amends Title VII of the Civil Rights Act of 1964***"to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes." PL 111-2(S-181), January 29, 2009.

The new statutory provision clearly governs Rowland's "discriminatory compensation" based claims, "or other practice" reported in her EEOC Charges. The district court stated that "*Plaintiff's employment relationship with PEG terminated on July 1, 2003*" and "*Plaintiff's employment with PSI, however, ended on July 1, 2003 when PSI ceased to exist as a legal entity,* " but that is not the basis for liability accrual, nor is it the basis for calculating the "charging period" of the discrete unlawful discriminatory compensation. ***Shea v. Rice***, 409 F.3d 448(D.C.Cir.2005)(Each week's paycheck that delivers less pay to a black employee than to a similarly situated white employee is a wrong actionable under Title VII, regardless of the fact that this pattern of paying less to the black employee was begun prior to the limitations period).

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[6] "This Act, and the amendments made by this Act, take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (**42 U.S.C. 2000e et seq.**), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), Title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date." PL 111-2, 2009 S 181, § 6, Approved Jan. 29, 2009.

Court alleging in timely filing. Dkt.1-¶¶21-22. [7]

The "district court had supplemental jurisdiction over Arizona Civil Rights Act (ACRA) claim" because Rowland alleged the "same facts and circumstances that formed basis for" her Title VII and ADA claims "supported by her ACRA claim." ***Savage v. Glendale Un. H.S., Dist. No. 205, Maricopa County***, 353 F.3d 1036(9th.Cir.2003) cert. denied 541 U.S. 1009(2004). App.Br.Pg.7.

The discrete discriminatory employment actions and retaliation occurring in the "charging period" (300 days prior to July 7, 2004) were timely reported and timely filed in the district court. ***Morgan***, 536 U.S. at 113 (The existence of past discrete acts of discrimination for which no charge is filed with the EEOC, and the employee's prior knowledge of their occurrence, does not bar an employee from filing charges about related discrete acts, as long as these acts are independently

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[7] 42 U.S.C. § 2000e-5(f)(1): "If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice.'Sec.706

B. Unlawful Practices Occurring During the Charge Filing Period Were Not Time Barred - Employer's Termination Date Does Not Freeze the Liability Accrual Date

Congress modified Title VII and the ADA in 2009, because court decisions like the one made here "undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress." 42 **U.S.C.A. § 2000e-5(e)(3)(A).**

1. SECOND EEOC CHARGE OF JULY 6, 2004 TIMELY FILED IN DISTRICT COURT

On **July 6, 2004**, Rowland filed a sworn and signed second **EEOC Charge #350-2004-04353** alleging discrimination based on Sex, Retaliation, Age, Disability; Continuing Action" against Wachovia Corporation, Prudential Insurance Company, Wachovia Securities LLC, Prudential Equity Group LLC, Prudential Insurance Company of America Disability Management Services, attaching nine pages. [Dkt.47-Exh. Pgs.954-63-Resp. to Pru. Motion to Dismiss]. The specific acts of the charge were within 300 days of the discrete incidents. [Dkt.47-Pgs.965-74]. Rowland's July 2004 EEOC Charge was also attached to her opposition to Wachovia's Motion to Dismiss. Dkts.65-66; Ap.Br.Pg.3-6.

Arizona issued a Notice of Right to Sue on **October 14, 2004.** A.R.S. § 41-1481(D). Dkt.65-Pg.282. "The EEOC issued a Notice of Suit Rights on **July 30, 2004.** Dkt.46-Pgs.952-3; App.Br.Pg.6. On **October 26, 2004** Rowland timely filed this Complaint No. CV '04-02287-PHX-EHC (jury trial demand) in the District

discriminatory and charges addressing those acts are themselves timely filed).

2. THIRD EEOC CHARGE OF NOV. 30, 2004 TIMELY FILED IN DISTRICT COURT

On **November 30, 2004** Rowland filed a third **EEOC Charge#350-2005-00893** alleging "discrimination based on race, sex, retaliation, age, disability, other; continuing Action" against Wachovia Corporation, Prudential Financial, Inc. [alleged at Dkt.20-¶3; Am.Compl.; Dkt.65-Pg.285 Exh. of Dkt.38-Resp. to Wac. Motion to Dismiss][Dkt.47 Pg.977-Exh. of Dkt.45-Resp. to Pru. Motion to Dismiss]. App.Br.Pgs.8-9.

On **January 7, 2005**, EEOC issued a Notice of Suit Rights [Dkt.65-Pg.286; Dkt.47-Pg.975] and on **Monday, April 11, 2005,** within 90 days of receipt of the notice, Rowland filed an Amended Complaint adding the claims of this third EEOC Charge. Dkt.20.

C. SIMILAR OR RELATED UNLAWFUL PRACTICES TIME-BARRED BY THE COURT QUALIFY AS UNLAWFUL EMPLOYMENT PRACTICES RELATING TO THOSE OCCURRING DURING A CHARGE FILING PERIOD 42 U.S.C. § 2000e-5(e)(3)(B)

1. FIRST EEOC CHARGE OF DECEMBER 27, 2002 FILED FOR ARBITRATION WITH NASD

On **January 8, 2003** the EEOC issued a Notice of Right to Sue [Dkt.47-Exh.-Pg.942] for Rowland's **December 27, 2002** EEOC Charge #350A300777 [Pgs.943-948] alleging "Discrimination based on Sex, Retaliation; Continuing Action" against her employer Prudential Securities, Inc.; *alleged in* Compl.-Dkt.1

¶¶1,17 & Am.Compl.-Dkt.20-¶1; App.Br. Pgs.9-10. On **February 6, 2003**, Rowland signed a sworn and notarized Uniform Submission Agreement and Statement of Claim submitting her December 27, 2002 EEOC Charge to arbitration under the NASD Dispute Resolution, Inc. Dkt.1-¶18. On March 25, 2004 she participated in Prudential Financial, Inc.'s **required mediation** as set forth in the employee manual **ROADS TO RESOLUTION** a policy requiring employees to:

Compl.-Dkt.1-Exh.A:

> "exhaust mediation before you proceed to arbitration" (Pgs. 13,2) including "If you are terminated, any issues involving Prudential arising from your employment or the termination of your employment are subject to **Roads to Resolution**." "Prudential encourages all employees to use **Roads to Resolution**, if you do not exhaust Steps One through Three of the Program before proceeding to arbitration or filing a administrative complaint or lawsuit, it is Prudential's intent to ask the arbitrator, agency, or court to suspend the proceedings until the Program has been utilized." (Pgs.8,1)Ap.Br.Pg.15.

Rowland, was employed with Prudential Securities, Inc., a broker dealer and wholly owned subsidiary of Prudential Financial, Inc. from April 15, 1996 until July 1, 2003 [NASD Financial Advisor License CRD #2740470, Dkt.65-exh:0-1]; App.Br.Pg.12. Rowland and Prudential's counsel engaged in the mandatory employee complaint process as described in Prudential's **ROADS TO RESOLUTION** and she participated in the unsuccessful NASD mediation of her December 2002 EEOC Charge on **March 25, 2004**. Dkt.1-¶¶30-41. On **April 21, 2006**, prior to any hearing

on the merits, the NASD, Dispute Resolution, Inc. granted her motion and **dismissed without prejudice** her EEO Claim specifically so that she could consolidate the arbitration claims with her claims in court after PSI became a defunct business entity on July 1, 2003 and bulk transferred Rowland and substantially all of its employees to Wachovia Securities.

Rowland timely filed the December 2002 charge for mediation and arbitration with the NASD, Dispute Resolution, Inc., a securities broker-dealer industry self-regulatory organization authorized under the U.S. Securities and Exchange Commission to resolve disputes with broker-dealers and it had "authority to grant relief from the practice charged." ***Cohen v. Wedbush, Noble, Cooke, Inc.,*** 841 F.2d 282(9th.Cir.1988)(Congress has committed to the SEC the task of ensuring the rights established by the Securities Act are not compromised by inadequate arbitration procedures). ***EEOC v. Comm. Office Prod. Co.,*** 486 U.S. 107, 110-111(1988)(Section 706(e) of Title VII means that a complainant "who initially institutes proceedings with a state agency with authority to grant or seek relief from the practice charge" must "file a charge" with that agency, or "have the EEOC refer the charge to that agency...).

D. EQUITABLE TOLLING & ESTOPPEL PRECLUDES STATUTE OF LIMITATIONS DEFENSE TO AVOID EEOC CHARGE TIMELY FILED UNDER AN EMPLOYER'S MANDATORY MEDIATION POLICY TO - "SUSPEND PROCEEDINGS UNTIL THE PROGRAM IS UTILIZED"

An action is deemed commenced and the statute

of limitations tolled at the time the complaint is filed; ***Young v. United States***, 535 U.S. 43(2002). "In a Title VII suit, failure to file an EEOC charge within the prescribed 300-day period is not a jurisdictional bar, but is treated as a violation of a statute of limitations, complete with whatever defenses are available to such a violation, such as equitable tolling and estoppel;" ***Valenzuela v. Kraft, Inc.*** 801 F.2d 1170, 1174(9th.Cir.1986). *Argued at* Ap.Br.Pg.10-11. Rowland's December 2002 EEOC Charge should be equitably tolled for the time those claims were under the jurisdiction of the NASD, consistent with the EEOC's policy encouraging mediation and arbitration of EEOC charges, and Arizona State's express policy that filing of a "charge is also subject to conciliation or other means of settlement" [A.R.S. 41-1481(B)]. ***Young***, 535 U.S. at 49(it is "hornbook law" that limitations periods are tollable "unless tolling would be inconsistent with the text of the relevant statute"); ***City of Tucson v. Clear Ch. Outdoor***, 209 Ariz. 544, 105 P.3d 1163(2005)("a statute of limitations is tolled when a suit is commenced, and a suit is commenced by the filing of a complaint"); ***Murphey v. Valenzuela***, 386 P. 2d 78 Ariz., 1963(statute of limitation tolled by commencement of action).

The district court did not toll the time that Rowland's first EEOC Charge of December 2002 was pending in arbitration pre-hearing procedures, and stated:

> "Plaintiff received a Right to Sue letter for her First claim alleging sex discrimination and harassment under Title VII in January 2003. Plaintiff filed this claim on October 26, 2004. Plaintiffs First Claim is barred by the statute of limitations." (Dism.Order-Pg.7:8-11). "Plaintiff knew of her claim and waited to file them with the

Court until after the limitations period had expired" (*Id.* Pg. 8: 20-22).

Rowland is a *Pro Se* Plaintiff and foreclosing equitable tolling would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process;" ***Zipes v. Trans Work Airlines***, 455 U.S. 385, 397 (1982)(Title VII filing period is requirement subject to tolling when equity so requires). App.Br. Pg. 15. Also, certain amendments to a charge of discrimination may relate back to the filing date of the original charge of discrimination and, therefore, be considered timely even if the amended charge takes place after the limitations period; 29 C.F.R. 1601.12(b). ***Simms v. Oklahoma***, 165 F. 3d 1321, 1325(10th.Cir.1999). The courts have "a duty to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements." ***Balistreri v. Pacifica Police Dep't***, 901 F.2d 696, 699 (9th.Cir.1990).

The district court unfairly granted Prudential a *contested* stay of this case (June 2005-April 2006), until the arbitration was dismissed without prejudice. Prudential should be estopped from taking the opposite litigation position of timely claims for arbitration purposes, but time barred only because the forum has changed. A statute of limitations is based on a policy that there is a point beyond which a prospective defendant should no longer need to worry about the possibility of commencement in the future of an action against him; not an employer's shield to avoid liability of EEOC charges timely filed, and noticed.

Prudential had a legal duty to refrain from filing for a stay in April 2005 and compelling arbitration, under the SEC rule voiding contracts of unlicensed broker-

dealers; and the NASD by-laws barring arbitration unless agreed to in writing once defunct; and the unavailability of NASD arbitration procedures two years past registration revocation. Prudential again came to court with unclean hands with a liability avoidance scheme after signing on **June 16, 2003** their "Uniform Submission Agreement" to arbitrate an employee's claims of discrimination, then dissolved her employer fourteen days later, on **June 30, 2003.**

III. EMPLOYMENT RELATIONSHIP EXISTED WITHIN THE MEANING OF TITLE VII CLAIMS & ARIZONA CIVIL RIGHTS ACT, WAGE STATUTES

The District Court's acceptance of, and the Ninth Circuit's affirmation of Defendant's repeated arguments of nonliability because Rowland is a former employee, not an employee, or an employee too long ago is contrary to the Civil Rights Acts.[8] The court dismissed some Complaint Counts not dependant on any type of employment relationship: FCRA as amended by FACTA, GLBA, privacy statutes, state insurance law.

An employer may not interfere with the protected

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[8] **A.R.S. 41-1492.10** Prohibition against retaliation and coercion (A). No person may discriminate against any individual because the individual has opposed any act or practice made unlawful by this article or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this article. (B). It is unlawful to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of, for having exercised or enjoyed or on account of his having aided or encouraged any other individual in the exercise or enjoyment of any right granted or protected by this article.

right of an employee[9] to file a charge, testify, assist, or participate in any manner in an investigation, hearing, or proceeding under **Title VII** of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a),[10] the Americans with Disabilities Act (**ADA**), 42 U.S.C. § 12101 *et seq.*, or the Equal Pay Act (**EPA**), 29 U.S.C. § 206(d). These employee rights are non-waivable under the civil rights laws. Interference with these protected rights is

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[9] "The term "**employee**" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States." **42 U.S.C. § 2000e(f)**. [Sec. 701].

"The term "**complaining party**" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter." **42 U.S.C. § 2000e(1)**. [Sec. 701].

[10] "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter." **42 U.S.C. § 2000e-3(a)**. [Sec. 704].

contrary to public policy and the anti-retaliation provisions of the civil rights statutes prohibit such conduct.

Employers are liable for the discriminatory acts of their "agents;" [11] 42 U.S.C. § 2000e(a)(Title VII); 42 U.S.C. § 12111(5)(A)(ADA)(defining "employer" as including any agent of the employer). When evaluating whether or not an employer is liable for the harassment of its employees by supervisors, the Supreme Court has adopted a vicarious liability standard. ***Burlington Indus. Inc., v. Ellerth***, 524 U.S. 742, 765(1998). The justification for heightened liability when supervisors are responsible for the creation of a hostile work place is that supervisors are able to use their position within an organization to bring the weight of the organization to bear on an employee. An employer is liable for harassment by a co-worker or **non-employer** if management knew or should have known of the misconduct; ***Assoc. of Mexican-American Educators v. California***, 231 F.3d 572, 584(9th.Cir.2000)(direct employment relationship not prerequisite to Title VII liability if defendant exercises sufficient power over individual's employment opportunities); ***Bates v Pacific Maritime Ass'n***, 744 F2d 705, 709 (9th.Cir.1984)(successor company liable for the predecessor company's legal obligations); ***Serapion v. Martinez***, 119 F.3d 982, 990(1st.Cir.1997), *cert. denied*, 118 S. Ct. 690 (1998)(individual who has an ownership

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[11] "The term "**respondent**" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title." 42 U.S.C. § 2000e(n). [Sec. 701].

interest in an organization, receives compensation based on its profits, and participates in managing the organization would qualify as an "owner" or "partner."); ***Smith v. Dutra Trucking Co.***, 410 F.Supp. 513(N.D.Cal 1976), *aff'd mem.* 580 F.2d 1054(9th.Cir.1978)(Act proscribed the discriminatory interference with an employment opportunity by a third party who is not the individual's direct employer). ***Galdamez v. Potter***, 415 F.3d 1015, 1022 (9th.Cir.2005)(An employer may be held liable for the actionable third-party harassment of its employees where it ratifies or condones the conduct by failing to investigate and remedy it after learning of it).

Title VII bars discrimination not only in the "terms" and "conditions" of ongoing employment, but also in the "terms" and "conditions" under which individuals may *obtain* employment. In ***Robinson v. Shell Oil Company***, 117 S. Ct. 843 (1997), the Supreme Court held that §703 extends protection to **former employees**. Comparable anti-retaliation provisions appear at 29 U.S.C. § 215 (a)(3)(FPA) and 42 U.S.C. § 12203(a)-(b)(ADA). The terms "§701(b) employer" or "covered employer" refer to persons who meet the jurisdictional requirements set forth in §701(b) of the Act, regardless of whether they are the actual employer of the aggrieved party. Courts have interpreted the language of § 703(a)(1)[12] of Title VII to include situations

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[12] "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's *race, color, religion, sex, or national origin*; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise

where a third party, who is a §701(b)[13] employer, has the ability to control or interfere with the employment opportunities of another employer and its employee.

IV. ROWLAND HAS A PRIVATE RIGHT OF ACTION UNDER SOX AND TIMELY FILED 18 U.S.C. § 1514A

The Ninth Circuit states "*Dismissal of Rowland's claims brought under SOX's criminal law statutes was proper because those statutes do not provide a private right of action.*" and cites ***Aldabe v. Aldabe***, 616 F.2d 1089, 1092 (9th.Cir.1980)(affirming dismissal of claims brought under criminal provisions that "provide[d] no basis for civil remedy). (MEMO Pg.3-¶2).

The Sarbanes-Oxley Act of 2002 ("SOX"),[14]

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adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." **42 U.S.C. § 2000e-2(a)**.Sec. 703

[13] "The term **"employer"** means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or proceeding calendar year and any agent of such a person,****" **42 U.S.C. § 2000e(b)**. [Sec. 701]

"The term **"person"** includes one or more individuals, governments, government agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11 [bankruptcy], or receivers." **42 U.S.C. § 2000e(a)**. [Sec. 701].

[14] **Section 806** "provides protection to employees against retaliation *** because the employee provided information to the employer or a federal agency or Congress relating to alleged

provides whistleblower protection and civil remedy by addition of §1514A to 18 U.S.C.A.; Pub.L.No. 107-205 806(a)).[15] For example, "Congress has indicated "a public policy in favor of whistleblowers in securities" and set aside confidentiality agreements entered into by former employees to permit disclosure relating to the pending litigation by employee under Section 806;" ***Stone v. Duke Energy Corp.***, 432 F.3d 320(4th.Cir. 2005)("Once a qualifying complainant files his complaint with a federal district court under section 1514A(b)(1)(B) of the SOX, jurisdiction vests in the district court and an ALJ no longer has jurisdiction).

The District Court states: *"Plaintiff's SOX claim fails as untimely." "Rowland's last date of employment with Prudential was July 1, 2003, which is the date of accrual for this cause of action. Rowland did not file her SOX charge with the DOL until July 2004 and September 2004, far beyond the 90 day time period."*

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violations of specified statutes." [68 Fed. Reg. 31860, May 28, 2003].

[15] "The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item: **1514A. Civil action to protect against retaliation in fraud cases."** Sarbanes-Oxley Act of 2002 Corporate and Criminal Fraud Accountability Act (CCFA) Public Law 107-204, July 30, 2002, 18 U.S.C. § 1514A(b). "A **person** who alleges discharge or other discrimination by any person in violation of subsection (A) may seek relief under subsection (c) by -- (A) filing a complaint with the Secretary of Labor; or (B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de nova review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy." **18 U.S.C. § 1514A(b).**

"*Accordingly, the Court will dismiss Plaintiff's Ninth Claim.*" (Dism. Order Pg.11 ¶6); 9th Circuit affirmed.

The court has erroneously based the claim accrual period on employment dates,[16] yet the statute states that an "action brought under paragraph (1) shall be commenced not later than 90 days after the date **on which the violation occurs.**" 18 U.S.C. § 1514A(b)(2)(D). "A full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violations" must be filed within 90 days after the alleged violation occurs; *i.e.*, when the discriminatory decision has been made and communicated to the employee, 29 C.F.R. § 1980.103(b). Rowland was "a person who allege[d] discharge or other discrimination by any person in violation of subsection (a) "who sought "relief under subsection (c)," [18 U.S.C. § 1514A(b)(1)] "by filing a complaint with the Secretary of Labor" (18 U.S.C. § 1514A(b)(1)(A)) on July 9, 2004, September 2, 2004, and December 3, 2004, within 90 days of the alleged violations. *Appendix*-DOL letters.

When "the Secretary has not issued a final

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[16] 29 C.F.R. § 1980.101 "**Employee** means an individual presently or formerly working for a company or company representative, and individual applying to work for a company or company representative, or and individual whose employment could be affected by a company or a company representative."
Company representative means any officer, employee, contractor, subcontractor, or agent of a company." [69 F.R. 52113, Aug. 24, 2004].

29 C.F.R. § 1980.101: "**Person** means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons." 68 Fed. Reg. 31860 (May 28, 2003).

decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de nova review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy." 18 U.S.C. § 1514A(b)(1)(B). The Secretary did not issue a final decision within 180 days and Rowland brought this action in Arizona District Court after speaking with, and e-mailing Lawrence A. Ricci, DOL OSHA Regional Supervisor.

V. RELATIONSHIP OF THE EQUAL PAY ACT/ FAIR LABOR STANDARDS ACT(FLSA/EPA) TO TITLE VII, 29 U.S.C. § 255(a)

The "Portal-to-Portal Act of 1947" provides a statute of limitations for actions seeking back wages owed. 29 U.S.C. § 255. There is a two year statute of limitations "after the cause of action occurred" for an employee to file a complaint in federal or state court. 29 U.S.C. 206(d). However, the Act provides for a three-year statute of limitations where the violations were willful. 29 U.S.C. § 255(a). An "employee" is defined as "**any individual employed by an employer**." 29 U.S.C. § 203(e)(1). An "employer" is defined as "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d).

The District Court determined that "*Plaintiff alleges that while on medical leave, she was 'subjected to disparate treatment' when her income was 'instead paid to a male' employee. (FAC ¶99). This does not state a cognizable claim under FLSA. Instead, it appears to be another attempt at a Title VII gender based claim. As discussed above, such a claim is untimely. Accordingly,*

the Court will dismiss Plaintiff's Eighth Claim." (Dism.Order-Pg.10-11,¶5).

Rowland's First Amended Complaint actually states:

> FAC ¶99: "Rowland, *** was at least subjected to disparate treatment, when both PSI and WS withheld from her recurring income, while on medical leave, that she was entitled to receive being a licensed Financial Advisor and had earned the rights to a stream of annual income, from, among other things, the revenue stream of "trailers" paid to Financial Advisors on their previous sale of mutual funds, insurance products, including variable annuities, and "managed money investment products." Rowland's earned income was instead paid to a male Financial Advisor."
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> FAC ¶98: "incorporates by reference all the proceeding and following paragraphs" which further describe unequal wages paid;
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> FAC ¶100: "Rowland's commission payout percentage unfairly declined due to the disparate treatment by firm wide managers who withheld income opportunities, so that Rowland's income declined year after year at the Scottsdale branch.

There are no pre-filing requirements for the **October 2004** FLSA/EPA claim filed in federal court, and covers willful violations reaching back three years (**October 2001**); otherwise two years (**October 2002**). 29 U.S.C. §§ 206(d), 255(a).

The anti-retaliation provisions of the FLSA/EPA apply here, because she filed a claim in **February 2003**

while still employed by Prudential Securities for arbitration, and §15(a)(3) of the FLSA provides that it is unlawful for any person "to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee." ***Brock v. Richardson***, 812 F.2d 121 (3rd.Cir.1987); ***Rea v. Martin Marietta Corp.***, 29 F.3d 1450 (10th.Cir.1994).

Where the jurisdictional prerequisites of both the EPA and title VII are satisfied, any violation of the Equal Pay Act/Fair Labor Standards Act is also is a violation of Title VII. Recovery for the same period of time may be had under both so long as the same individual does not receive duplicative relief for the same wrong. *Argued*: Ap.Br. Pgs. 38-39.

VI. FAMILY MEDICAL LEAVE ACT (FMLA) FORMER EMPLOYEE 29 U.S.C. §2615

A FMLA-protected leave cannot be used as a negative factor in employment decisions and 29 U.S.C. § 2615(a)(1) prohibits the "interference with the exercise of rights" of the statute; 29 C.F.R. 825.220(c). ***Diaz v. Ft. Wayne Foundry Corp.***, 131 F.3d 711, 712 (7th.Cir.1997)(holding that a claim by a former employee that he was denied the use of FMLA leave is a claim of a substantive right, covered under (a)(1)); ***Rankin v. Seagate Techs., Inc.***, 246 F.3d 1145, 1148 (8th.Cir.2001).

The Ninth Circuit affirmed the District Court: "*claims fail against PFI and PI because they have no employment relationship with Plaintiff.* (Dism.Order-

Pg. 12:5-6). "*Plaintiff has no cause of action against those with whom she has not been employed and she alleges that she was employed only by PSI/PEG and WS.*" (*Id.*-Lns.18-20). "As against PEG, *Plaintiff's employment terminated on July 1, 2003 ... The FMLA claims are based on Plaintiff's attempt to return to work at the end of her medical leave, which occurred beginning February 2004 and ultimately ended in her "constructive termination." Plaintiff's claim did not accrue until after her employment ended with PEG. Accordingly, the Court will dismiss Plaintiff's Tenth and Eleventh Claims.*" (Dism.Order-Pg. 12:21-26).

The FMLA prohibits interference with Rowland's employment, or employment she qualified for, after she was approved to take a protected FMLA-leave. Under theories of agency, ownership and control, and former employee coverage, the charged conduct is FMLA prohibited interference with her employment. ***Smith v. Bell South Tele., Inc.*** 273 F. 3d 1303 (11th. Cir.)(prohibits discrimination against former employees who took FMLA leave); ***Barrilleaux v. Thayer Lodging Group, Inc.***, 601 F.2d 601, 1999(E.D. La. 199)(coverage of former employee because her current employer was a successor to her previous employer). 29 C.F.R. § 825.220(b)("Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act.").

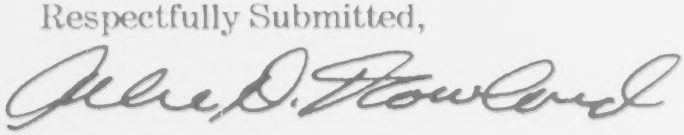
In April 2003, Joe Tierney, Vice President of Prudential Benefits, specifically denied her wages due and said he was aware of her litigation, and continued to withhold her prior earnings data from Prudential Insurance while she was on a Prudential Securities approved FMLA-leave. Dkt.20-¶38; App.Br.Pg.39.

These actions interfered with her attempts to return to work while Prudential Financial retained a 38% ownership in a joint-venture with Wachovia Corporation after transferring her professional licenses to Wachovia Securities. "The sharing of records about a harassment complaint with prospective employers of the complainant constitute unlawful retaliation." "*Wachovia told me when it terminated me that it based its decision on my disability leave of absence....and terminated me three days later...*" after Rowland asked for assistance with "returning to work....February 27, 2004." Dkt.53-Pgs.7-8. In 2004, Prudential Securities' counsel served Rowland's doctors (including her gynecologist) and Prudential Insurance with illegitimate subpoenas for confidential medical information. App.Br.Pgs.29-35. Prudential Insurance released protected medical records to a "**random woman**" and litigation counsel. App.Br.Pg.33.

VII. CONCLUSION

The Supreme Court should grant certiorari to review the Constitutional issues arising here from the Ninth Circuit's errors of law, statutory interpretation, and application of law.

Respectfully Submitted,



Arlene Rowland, Petitioner *Pro Se*
P.O. Box 7591, Ventura, CA 93006
(no telephone, no fax or e-mail)

April 10, 2010

Supreme Court, U.S.
FILED
Apr 12 2010
10-213
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168 (2)

No.

IN THE

Supreme Court of the United States

ARLENE D. ROWLAND,
Petitioner,

v.

PRUDENTIAL FINANCIAL, INC.,
WACHOVIA CORPORATION, *et al*,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals For The
Ninth Circuit

REVISED APPENDIX

In Support of Petition for Writ of Certiorari

Arlene D. Rowland, *Petitioner-Plaintiff Pro Se*
P.O. Box 7591, Ventura, CA 93006
(no telephone) August 9, 2010

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FILED

JAN 11 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARLENE D. ROWLAND, Plaintiff - Appellant, v. PRUDENTIAL FINANCIAL, INC.; WACHOVIA CORPORATION, Defendants - Appellees.	No. 07-16358 D.C. No. CV-04-02287-EHC **MEMORANDUM***

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Submitted December 15, 2009**
Before: GOODWIN, WALLACE, and CLIFTON,
Circuit Judges.

---

* This disposition is not appropriate * for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

LBS/Research

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Arlene D. Rowland appeals pro se from the district court's judgment dismissing her action alleging employment discrimination and retaliation in violation of state law, Title VII, the Americans with Disabilities Act, the Sarbanes-Oxley Act ("SOX"), the Family Medical Leave Act ("FMLA"), and other federal statutes. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to state a claim. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). We review for abuse of discretion denial of leave to amend and denial of a request for default judgment. *Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002); *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986). We affirm.

The district properly dismissed Rowland's federal discrimination and retaliation claims as untimely. *See Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000) (explaining that where the plaintiff initially institutes proceedings with a state or local agency, a charge of employment discrimination must be filed with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the discriminatory act); *Edwards v. Occidental Chem. Corp.*, 892 F.2d 1442, 1445 (9th Cir. 1990) ("An action brought under Title VII must be filed within ninety days of receipt of a right to sue letter from the EEOC or appropriate state agency.").

The district court also properly dismissed Rowland's state discrimination claims and section 806 SOX claim for the same reason. *See Madden Tyler v Maricopa County*, 943 P.2d 822, 828 (Ariz. Ct. App. 1997) (explaining that under the Arizona Civil Rights

Act, Ariz. Rev. Stat. § 41-1481(A), (D), "a charge must be filed with the [state agency] within 180 days after the alleged unlawful employment practice occurred" and "[t]he charging party has one year after the filing of the charge" to file suit); 18 U.S.C. § 1514A(b) (under the SOX, a plaintiff must file a charge with the Department of Labor within 90 days of the alleged violation).

Dismissal of Rowland's claims brought under SOX's criminal law statutes was proper because those statutes do not provide a private right of action. *See* 18 U.S.C. §§ 1512-13 (providing criminal punishment for tampering with or retaliating against an informant); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir.1980) (affirming dismissal of claims brought under criminal provisions that "provide[d] no basis for civil remedy").

Dismissal of Rowland's FMLA claims was also proper because Prudential Financial Inc.'s subsidiary was no longer her employer when she attempted to return to work. *See* 29 U.S.C. §§ 2615(a)(1)-(2).

The district court did not abuse its discretion in denying without prejudice Rowland's motion for leave to file a Second Amended Complaint as moot in light of her motion for leave to file a Third Amended Complaint. *See Armstrong v. Davis*, 275 F.3d 849, 878 n.40 (9th Cir. 2001) (amended pleading supersedes an earlier pleading).

The district court also did not abuse its discretion in denying Rowland's requests for entry of default and default judgment under Fed. R. Civ. P. 55(a)-(b) because Prudential Financial, Inc. and Wachovia Corporation filed motions to dismiss. *See* Fed. R. Civ. P. 55(a) (permitting the entry of default

when the defendant "fail[s] to plead or otherwise defend"); *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 689 (9th Cir. 1988) (entry of default judgment inappropriate if a defendant indicates its intent to defend the action).

We do not consider Rowland's listed but undeveloped contentions. *See Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992) (issues raised in pro se
litigant's brief but not supported by argument deemed waived).

Rowland's remaining contentions are unpersuasive.

AFFIRMED.

Filed Jan. 11, 2010. C.A.9 (Ariz.),2010.
362 Fed.Appx. 596, 2010 WL 76439 (C.A.9 (Ariz.))

Arlene D. Rowland, Ventura, CA, pro se.

Deborah J. Broyles, Thelen Reid Brown Raysman & Steiner LLP, San Francisco, CA, Caroline Larsen, Bryan Cave, LLP, Phoenix, AZ, for Defendants-Appellees.

Appeal from the United States District Court for the District of Arizona, Earl H. Carroll, District Judge, Presiding. D.C. No. CV-04-02287-EHC.

LBS/Research 07-16358
[END OF APPELLATE COURT DOCUMENT #]

FILED
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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ARLENE D. ROWLAND Plaintiff-Appellant, v. PRUDENTIAL FINANCIAL and WACHOVIA CORPORATION, Defendants-Appellees.	**No. 07-16358** D.C. No. CV-04-02287-EHC U.S. District Court Arizona Phoenix **MANDATE**

The judgment of this Court, entered January 11, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:
Molly C. Dwyer
Clerk of Court
/s/
Theresa Benitez
Deputy Clerk

[END OF APPELLATE COURT DOCKET #34]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
NOTICE OF APPEAL NOTIFICATION FORM

Court of Appeals No. _____

CASE INFORMATION:

Short Case Title: Rowland v. Prudential Financial, et al
District, Division & Judge AZ-PHX-Judge Earl H. Carroll
District Court Case No. CV-04-2287-PHX-EHC
Date Complaint Filed: 10/26/04
Date Appealed order/judgment *entered*: 07/02/07; 12/27/06; 12/14/06; 09/14/06; 04/28/06; 06/03/05
Date NOA *filed*: 07/23/07

***

Court Reporter(s) Name & Phone Number: Candy Potter (602) 322-7246

***

FEE INFORMATION
Date Docket Fee Paid: 07/24/07 [$455.00]

***

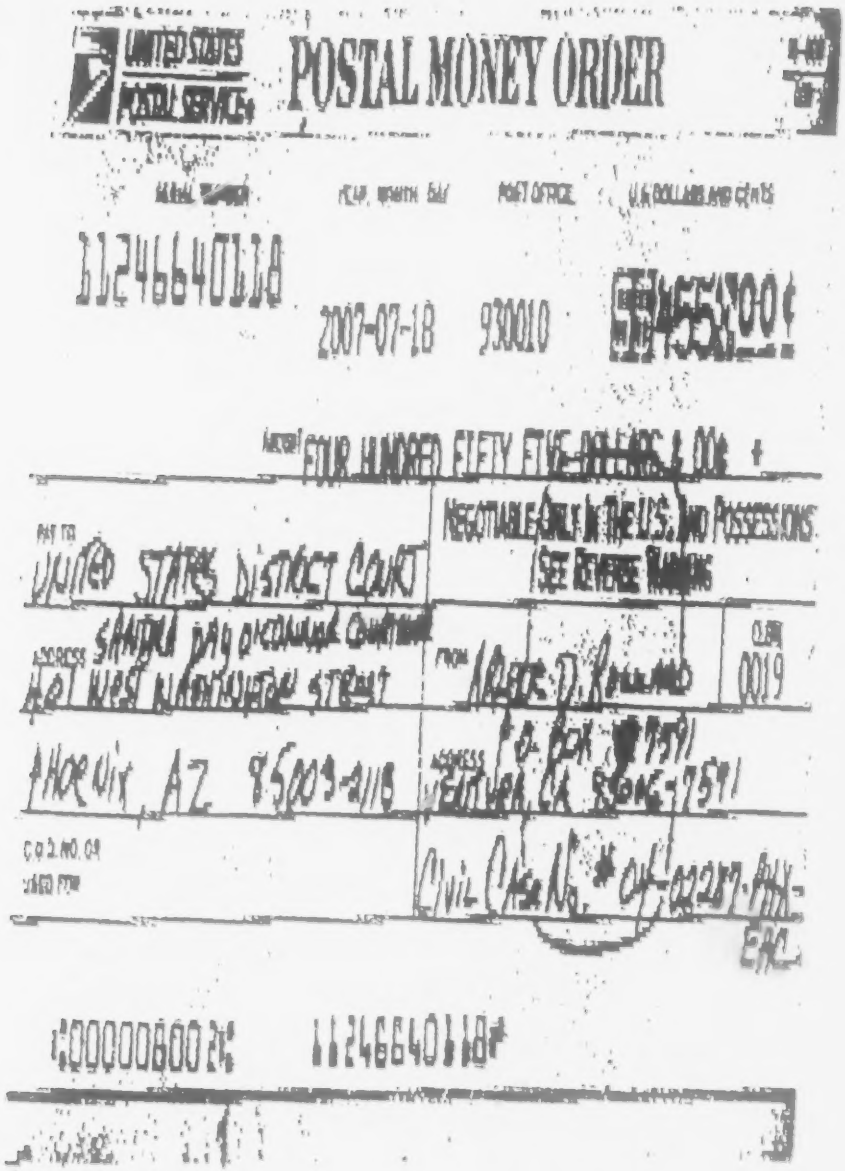
COUNSEL INFORMATION

[X] See attached docket for names/addresses/phone numbers

***

Name & Phone Number of Person Completing this Form: Deborah N. Herman 602-322-7218

[END OF DISTRICT COURT DOCKET #145]



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Civil Case No. # 07-02287-PHX-EHC

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Case 2:04-cv-02287-EHC Document 144 Filed 07/02/07

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Arlene Rowland, Plaintiff, v. Prudential Financial, Inc.; Wachovia Corporation, Defendant.	**JUDGMENT IN A CIVIL CASE** **CV-04-2287-PHX-EHC**

___ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

_X_ Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed July 2, 2007, judgment is entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and complaint and action are dismissed.

RICHARD H. WEARE
District Court

July 2, 2007
Executive/Clerk

s/ Deborah N. Herman
By: Deputy Clerk

cc: (all counsel)

END OF DISTRICT COURT DOCKET #144

Not Reported in F.Supp.2d, 2007 WL 1893630
(D.Ariz., 2007) July 02, 2007 (Original Order - 14 pages)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arlene ROWLAND, Plaintiff,
v.
PRUDENTIAL FINANCIAL, INC., Wachovia Corporation, Defendants.

No. CV 04-2287-PHX-EHC

July 2, 2007

Arlene D. Rowland, Ventura, CA, pro se.

Deborah J. Broyles, Patrick M. Ryan, Kendra M. Forsythe, Thelen Reid Brown Raysman & Steiner LLP, San Francisco, CA, Linda Stephanie Husar, Thelen Reid Brown Raysman & Steiner LLP, Los Angeles, CA, Caroline Kathleen Larsen, Sean Keenan McElenney, Bryan Cave LLP, Phoenix, AZ, for Defendants.

ORDER

Hon. Earl H. Carroll

Pending before the Court are Plaintiff's "Motion for Court Action Civil Procedure Compliance" (Dkt.107), Plaintiff's Motion for Status of Pending Motions (Dkt.108), Plaintiff's Motion for Pending Motion Notification (Dkt.111), Plaintiff's Motion for

Joinder of Persons Needed for Just Adjudication (Dkt.118), Plaintiff's Motion to Add Wachovia Corporation to Plaintiff's First Amended Complaint (Dkt.120), Plaintiff's Motion for Relief (Dkt.120), Defendant Prudential Financial, Inc.'s and non-parties Prudential Equity Group, LLC and Prudential Insurance Company of America's (collectively, the "Movants") Motion to Dismiss (Dkt.124), Plaintiff's Motion for Entry of Default as to Prudential Financial, Inc. (Dkt.127), Plaintiff's Motion for Preclusion of Defenses and Award of Expenses (Dkt.127), Plaintiff's Motion to Strike Movants' Motion to Dismiss (Dkt.128), and Plaintiff's Motion to Unseal Document (Dkt.130). The Court will consider each motion in turn.

A. ***Background***

Plaintiff was employed by Prudential Securities, Inc. ("PSI") in Phoenix from "January 1, 1999 to September 6, 2002," when she went on medical leave. (Dkt.20, ¶ 1). On July 1, 2003, PSI "ceased to exist as a corporate entity" and Wachovia Securities ("WS") took over PSI's brokerage business. (Dkt.124). Plaintiff's employment transferred to WS. (Dkt.20, ¶ 7). Prudential Equity Group, LLC ("PEG") is the successor to PSI. (Dkt.124).

On October 26, 2004, Plaintiff, who is pro se, filed a Complaint alleging a variety of employment related claims against Defendants. (Dkt.1). On April 11, 2005, Plaintiff filed a First Amended Complaint ("FAC"), which is now the operative complaint. (Dkt.20). Defendant Prudential Financial, Inc. ("PFI") filed a Motion to Dismiss for lack of jurisdiction, or in the alternative, a stay in the proceedings pending

arbitration (Dkt.24). On June 3, 2005, the Court granted PFI's Motion to Stay the proceedings pending arbitration. (Dkt.52). Plaintiff brought suit against Defendant Prudential in February 2003 before the National Association of Securities Dealers, Inc. ("NASD"), but then voluntarily sought dismissal without prejudice, which was granted on April 21, 2006.[FN1] (*See* RJE, Ex. T). After Plaintiff's claims in the NASD arbitration were dismissed without prejudice, the Stay was lifted in this case. (Dkt.83). The Court denied Defendants' Motions to Dismiss "without prejudice to re-urging pending the ruling on Plaintiff's Motion to Amend." [FN2] (Dkt.83).

FN1. Movants filed a Request for Judicial Notice in Support of their Reply. (Dkt.136). The Request includes Exhibits R through T. Exhibit R is the NASD Panel's Conditional Order of Dismissal from June 7, 2005. Exhibit S is Plaintiff's Letter to the NASD Accepting the Conditional Offer, dated June 17, 2005. Exhibit T is the NASD Panel's Final Award, dated April 21, 2006. Courts may take judicial notice of arbitration awards pursuant to Fed.R.Evid. 201. *See Stacks v. Southwestern Bell Yellow Pages, Inc.*, 27 F.3d 1316, 1326 n. 3 (8th Cir.1994); *Yerkovich v. MCA Inc.*, 11 F.Supp.2d 1167, 1169 n. 2 (C.D.Cal.1997). The Court takes Judicial Notice of Ex. T, the NASD Arbitration Award, under Fed.R.Evid. 201.

FN2. Plaintiff contends that Movants' pending Motion to Dismiss is improper under Fed.R.Civ.P. 12(g) because this is their second Motion to Dismiss. (Response at 1-2). This

argument is misplaced. Plaintiff had filed a first amended complaint as of right unbeknownst to Movants. Movants based their original Motion to Dismiss on Plaintiff's original complaint and the Court order denied the first Motion "without prejudice to re-urging pending the ruling on Plaintiff's Motion to Amend." (Dkt.83). Furthermore, the defense of failure to state a claim is excepted from the Consolidation of Defenses Rule 12(g) under Fed.R.Civ.P. 12(h)(2).

B. Plaintiff's "Motion for Court Action Civil Procedure Compliance"

Plaintiff filed a "Motion for Court Action Civil Procedure Complaint." Plaintiff requests that the Court order Defendant PFI to withdraw counsel, Kendra Forsythe, and to substitute counsel pursuant to Local Rule 83.1. (Dkt.107).

Local Rule 83.1(b)(3) provides that "[a]n attorney who is admitted to practice in another U.S. District Court, and who has been retained to appear in this Court, may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case." Counsel Kendra Forsythe filed a Motion for Admission Pro Hac Vice and paid the pro hac vice fee of one hundred dollars pursuant to Local Rule 83.1(b)(3). (Dkts.120, 121). The Court granted Kendra Forsythe's Motion for Admission Pro Hac Vice and, therefore, she is permitted to appear and participate in this case. (Dkt.122). Accordingly, the Court will deny Plaintiff's "Motion for Court Action Civil Procedure Complaint."

(Dkt.107).

C. *Plaintiff's Motion for Status of Pending Motions and Plaintiff's Motion for Pending Motion Notification*

Plaintiff filed a Motion for Status of Pending Motions (Dkt.108) and a Motion for Pending Motion Notification (Dkt.111). In these motions, Plaintiff requests the status of her Motion for Reconsideration of Order (Dkt.56) and Motion for Leave to File Third Amendment Complaint (Dkt.93).

The Court denied the Motion for Reconsideration on March 29, 2006 (Dkt.74), and denied the Motion for Leave to File Third Amendment Complaint pursuant to Federal Rule of Civil Procedure 8(a) on December 14, 2006 (Dkt.109). Accordingly, the Court will grant Plaintiff's Motion for Status of Pending Motions (Dkt.108) and Motion for Pending Motion Notification (Dkt.111) to the extent that Plaintiff has been informed in this Order that the motions referenced have been denied.

D. *Plaintiff's Motion for Joinder of Persons Needed for Just Adjudication*

Plaintiff filed a Motion for Joinder of Persons Needed for Just Adjudication ("Motion for Joinder). (Dkt.118). Plaintiff seeks to join Prudential Securities, Inc., Prudential Securities Group, Inc., Prudential Equity Group, Inc., Prudential Equity Group, LLC and Subsidiaries, Prudential Insurance Company of America, Wachovia Securities LLC, Wachovia Securities Financial Network, LLC, and Thomas

Norman Zirbel, pursuant to Federal Rule of Civil Procedure 19(a). (Dkt.118). Defendant Prudential Financial, Inc. and Non-Parties Prudential Equity Group, LLC and Prudential Insurance Company of America filed a response, objecting to Plaintiff's Motion for Joinder. (Dkt.125).

Rule 19(a) provides that:

> A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

Plaintiff fails to meet the standard of Rule 19. Plaintiff has not demonstrated any grounds for joining these additional defendants. Nor has Plaintiff shown that the absence of these additional defendants would either materially reduce the likelihood that the Court could provide justice for those already parties or be detrimental to the non-parties themselves. Accordingly, the Court will deny Plaintiff's Motion for Joinder (Dkt.118).

E. ***Plaintiff's Motion to Add Wachovia Corporation to Plaintiff's First Amended Complaint and Plaintiff's Motion for Relief***

Plaintiff filed a Motion to Add Wachovia Corporation to Plaintiff's First Amended Complaint ("Motion to Add Wachovia Corporation" and "Motion for Relief"). (Dkt.120). Plaintiff seeks to join Defendant Wachovia Corporation pursuant to Federal Rule of Procedure 19(a) and 21. Plaintiff argues that Defendant Wachovia Corporation should be joined by the Court, "as a party of the action because its absence avoids justice and complete relief accorded among those already parties." (Dkt.120, p. 2-3).

On April 28, 2006, the Court dismissed Wachovia Corporation based on a lack of personal jurisdiction. (Dkt.83). The Court's dismissal of Wachovia Corporation for lack of personal jurisdiction cannot be vacated with a Rule 19(a) motion for joinder. Joinder is not feasible under Rule 19(a) "when the absentee is not subject to personal jurisdiction." *EEOC v. Peabody Western Coal Co.*, 400 F.3d 774, 779 (9th Cir.2005). The Court, therefore, will deny Plaintiff's request to join Wachovia Corporation pursuant to Rule 19(a). Because joinder of Wachovia Corporation would be inappropriate based on a lack of personal jurisdiction, the Court will also deny Plaintiff's request to join Wachovia Corporation pursuant to Rule 21. Accordingly, the Court will deny Plaintiff's Motion to Add Wachovia Corporation (Dkt.120).

Plaintiff also motions this Court pursuant to Federal Rule of Civil Procedure 60(b)(3) ("Motion for Relief"). (Dkt.120). Plaintiff argues that "Counsel for

Wachovia Corporation perpetrated a fraud upon this Court by alleging, advocating, and maintaining its position of this Court's lack of personal jurisdiction, until this Court dismissed defendant Wachovia Corporation." (Dkt. 120, p 3).

The Court will also deny Plaintiff's Motion for Relief pursuant to Rule 60(b)(3). Rule 60(b)(3) permits a losing party to move for relief from judgment or order on the basis of "fraud, misrepresentation, or other misconduct of an adverse party." Fed.R.Civ.P. 60(b)(3). To prevail, the "moving party must prove by clear and convincing evidence that the verdict [or order] was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of prevented the losing party from fully and fairly presenting the defense." *De Saracho v. Custom Food Machinery, Inc*, 206, F.3d 874, 880 (9th Cir.2000). Plaintiff does not meet the clear and convincing evidence standard of Rule 60(b). Plaintiff fails to present any substantive evidence that Wachovia Corporation misstated or misrepresented facts or perpetuated a fraud upon this Court by moving for dismissal based on lack of personal jurisdiction. Accordingly, the Court will deny Plaintiff's Motion for Relief pursuant to Rule 60(b)(3) (Dkt.120).

F. *Movants' Motion to Dismiss and Plaintiff's Motion to Strike Movants' Motion to Dismiss*

Defendant Prudential Financial, Inc.'s ("PFI") and non-parties Prudential Equity Group, LLC and Prudential Insurance Company of America's (collectively "Movants") filed a Motion to Dismiss for failure to state a claim on January 29, 2007. (Dkt.124).

Plaintiff responded on February 22, 2007 by filing a Motion to Strike Movants' Motion to Dismiss. (Dkt.128). On April 6, 2007, Defendant Movants filed an Opposition to Plaintiff's Motion to Strike. (Dkt.135). Plaintiff's Motion to Strike responds to Movants' Motion to Dismiss and the Court will treat the Motion to Strike as a Response to the Motion to Dismiss. The Court will treat Movants' "Opposition to Plaintiff's Motion to Strike" as a Reply to Plaintiff's Response.

A Motion to Dismiss for failure to state a claim under Fed.R.Civ.P. 12(b)(6) is appropriate when it appears to a certainty that a plaintiff will not be entitled to relief under the allegations of the Complaint. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir.1980). The Court "must accept all factual allegations of the complaint as true and draw all reasonable inferences in favor of the nonmoving party." *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir.1999). Furthermore, when there is a pro se plaintiff, "the allegations of the *pro se* complaint ... [are held] to less stringent standards than formal pleadings drafted by lawyers," *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972) (per curiam).

1. ***Plaintiff's Title VII and Americans with Disabilities Act ("ADA") claims***

Plaintiff's First through Fourth Claims alleging discrimination and retaliation based on gender and disability under Title VII and the ADA are untimely. To bring a timely claim, a party must first file a charge with the Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged violation. 42 U.S.C. § 2000e-5(e)(1). After receiving a Right to Sue

letter from the EEOC, a party has 90 days to file a claim. 42 U.S.C. § 2000e-5(f)(1). This 90 day period "constitutes a statute of limitations. If claimant fails to file within 90-day period, the action is barred accordingly." *Edwards v. Occidental Chem. Corp.*, 892 F.2d 1442, 1445 (9th Cir.1990). Plaintiff received a Right to Sue letter for her First claim alleging sex discrimination and harassment under Title VII in January 2003.[FN3] (FAC ¶ 1, Compl. ¶ 17). Plaintiff filed this claim on October 26, 2004. (Dkt.1). Plaintiff's First Claim is barred by the statute of limitations. (Dkt.1).

FN3. Plaintiff alleges that she filed a *second* EEOC charge on July 6, 2004 and received a Right to Sue letter on July 30, 2004, thereby making this the operative date for the statute of limitations period. This charge, however, is not within the 300 day period from the alleged violation that Plaintiff has to file when she was no longer employed by PSI as of July 1, 2003. Furthermore, Plaintiff alleges sex discrimination in the First Amended Complaint (¶¶ 20-23) under the heading "Workplace Discrimination, Harassment, Retaliation 1999-2002." Taking the Plaintiff's allegations as true, the alleged violations based on sex occurred from 1999-2002. There are no violations alleged of discrimination or harassment based on sex beyond these dates that would make the second EEOC charge any different from the first, except that "age[ ] and disability discrimination and retaliation" was alleged in the second charge. (FAC ¶¶ 1, 2).

Plaintiff's Second Claim alleging retaliation under Title VII and Third and Fourth Claims alleging discrimination and retaliation under the ADA are untimely.[FN4] Plaintiff failed to file any charges with the EEOC within 300 days of the alleged violation. Failure to file a charge within this 300 day period "is treated as a violation of a statute of limitations." *Santa Maria v. Pacific Bell*, 202 F.3d 1170, 1176 (9th Cir.2000); *see also Douglas v. California Dept. of Youth Authority*, 271 F.3d 812, 823 (9th Cir.2001) (applying 300 day limitation to ADA claim). This period "begins to run on the date the employee received notice of the employment decision." *Taxey v. Maricopa County*, 237 F.Supp.2d 1109, 1113 (D.Ariz.2002). Plaintiff filed discrimination and retaliation charges with the EEOC on July 6, 2004 and November 30, 2004. (FAC ¶ 3). Plaintiff's employment with PSI, however, ended on July 1, 2003 when PSI ceased to exist as a legal entity. (FAC ¶ 7). These charges were thus untimely filed with the EEOC as against Movants by more than two months.

FN4. Plaintiff's Third and Fourth Claims are also based on discrete acts that occurred after her employment with PSI ended on July 1, 2003. In her Third Claim, Plaintiff alleges an ADA violation by Defendants for refusing "to permit plaintiff to return to work" and by denying plaintiff's "multiple reasonable accommodation requests." (FAC ¶¶ 69, 70). Plaintiff's Fourth Claim alleges that "Defendants subjected [Plaintiff] to harass[ment] ... after she made an inquiry [to return to work] on May 28, 2004" and "the discrimination includes ... denying and/or

> interfering with Plaintiff's right to return to work." (FAC ¶¶ 74, 78). Plaintiff tried to return to work beginning in February, 2004, (FAC ¶ 35) at which time she was not employed by PSI (FAC ¶ 7).

Plaintiff argues that the statute of limitations should be equitably tolled. Equitable tolling is "readily available in extreme cases ... [and] has been applied sparingly." *Scholar v. Pacific Bell*, 963 F.2d 264, 268 (9th Cir.1992). Equitable tolling is appropriate when

> a plaintiff is unable to obtain vital information bearing on the existence of his claim ... Unlike equitable estoppel, equitable tolling does not depend on any wrongful conduct by the defendant to prevent the plaintiff from suing. Instead it focuses on whether there was excusable delay by the plaintiff. If a reasonable plaintiff would not have known of the existence of a possible claim within the limitations period, then equitable tolling will serve to extend the statute of limitations for filing suit until the plaintiff can gather what information he needs ... However, equitable tolling does not postpone the statute of limitations until the existence of a claim is a virtual certainty.

Santa Maria v. Pacific Bell, 202 F.3d 1170, 1178 (9th Cir.2000). Plaintiff knew of her claims and waited to file them with the Court until after the limitations period had expired. Furthermore, a plaintiff may not claim excusable delay or ignorance in an attempt to equitably toll the statute of limitations when she has

consulted an attorney within the applicable statute of limitations period. *See Stallcop v. Kaiser Foundation Hospitals*, 820 F.2d 1044, 1050 (9th Cir.1987) (plaintiff is not excusably ignorant when she consulted attorneys within the statute of limitations period as she is charged with "constructive knowledge" of her rights and the law). Plaintiff was represented by counsel in the NASD proceedings, prior to June 21, 2004, when she decided to participate pro se. (*See* RJN, Ex. T at 13). She is thus deemed to be aware of her rights. Accordingly, the Court will dismiss Plaintiff's First through Fourth Claims.

2. ***Plaintiff's ACRA and AEPA claims***

Plaintiff's Fifth claim arises from a state law cause of action under ACRA (A.R.S. 41-1401, et seq.) and AEPA (A.R.S.23-1501). This claim is barred by the statute of limitations. Under ACRA, Plaintiff must file an administrative charge within 90 days of the alleged violation and from this date, she has one year to file a civil claim. (A.R.S.41-1481(D)). Plaintiff filed her charge with the Arizona Civil Rights Division on December 27, 2002 (FAC ¶ 1) and thus, had until December 27, 2003 to file her civil claim. This claim was filed on October 26, 2004 and is thus, untimely. (Dkt.1).

Plaintiff's claim under AEPA also fails because it is untimely. (FAC ¶ 81). A plaintiff must filed suit within one year after the cause of action accrues. (A.R.S.12-541). Plaintiff's employment relationship with PEG terminated on July 1, 2003 and thus provides the last date a cause of action could have accrued against Movants. (FAC ¶ 7). This action was filed in October 2004, approximately three months past the

appropriate date. (Dkt.1). Accordingly, the Court will dismiss Plaintiff's Fifth Claim.

3. ***Plaintiff's Fair Credit Reporting Act ("FCRA") claim***

Plaintiff alleges that PI's Disability Management Services ("PI-DMS") willfully violated the FCRA, 15 U.S.C. § 1681 et seq., by complying with a subpoena from a "court or tribunal having *NO* authority or jurisdiction to execute [or] issue such an order [or] a subpoena without a tribunal order or signed medical authorization attached" and by providing her medical information during the NASD arbitration to PEG. (FAC ¶¶ 24, 85). When Plaintiff chose the NASD forum to arbitrate her claims, she voluntarily contracted to be subject to the NASD Code of Arbitration. (*See* RJN, Ex. T (Claimant Arlene D. Rowland signed NASD Submission Agreement)). Section 10322 of NASD's Code of Arbitration states, "arbitrators have the authority to issue subpoenas for the production of documents." Thus, the subpoena issued by NASD to PI-DMS is valid.

Furthermore, the FCRA provides an exception that "any consumer reporting agency may furnish a consumer report ... [i]n response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury." 15 U.S.C. § 1681b(a)(1). It thus follows that when an alleged FCRA violation occurs in an arbitration proceeding, it is not a violation to comply with a subpoena for documents validly issued by the arbitrator(s). *See Kansas Commission on Civil Rights v. Sears, Roebuck and Co.*, 216 Kan. 306, 320, 532 P.2d

1263 (1975) (reasoning that it would be "difficult to stigmatize compliance with a subpoena duly issued by an agency ... which was authorized by law to issue subpoenas, as either willful or negligent failure to comply with the requirement of [the FCRA]"). Accordingly, the Court will dismiss Plaintiff's Sixth Claim.

4. ***Plaintiff's Gramm-Leach-Bliley Act ("GLBA") claim***

Plaintiff alleges that Defendants violated § 521 of the GLBA. The GLBA, however, does not provide for a private cause of action. The provisions of the GLBA are to be enforced by "the federal functional regulators, the State insurance authorities, and the Federal Trade Commission." 15 U.S.C. § 6805(a). *See Mention v. Experian Corp.*, 2003 WL 21692820 at *3 (S.D.N.Y., 2003). Although Plaintiff asserts state law claims that provide a private right of action, she does not do this in the First Amended Complaint. Rather, these state law claims appear for first time in her Response to Movants' Motion to Dismiss. (Response at 13). Such claims will not be considered by the Court as they were not alleged in the pleadings. Accordingly, the Court will dismiss Plaintiff's Seventh Claim.

5. ***Plaintiff's Fair Labor Standards Act ("FLSA") claim***

The FLSA, as amended by the Equal Pay Act, provides a cause of action for an employee when an employer discriminates "between employees on the basis of sex by paying wages to employees ... at a rate less than the rate at which he pays wages to employees

of the opposite sex." 29 U.S.C. § 206(d). Plaintiff alleges that while on medical leave, she was "subjected to disparate treatment" when her income was "instead paid to a male" employee. (FAC ¶ 99). This does not state a cognizable claim under FLSA. Instead, it appears to be another attempt at a Title VII gender based claim. As discussed above, such a claim is untimely. Accordingly, the Court will dismiss Plaintiff's Eighth Claim.

6. ***Plaintiff's Sarbanes-Oxley Act ("SOX") claim***

Plaintiff's SOX claim fails as untimely. To be timely, Plaintiff must file a charge with the Department of Labor ("DOL") within 90 days of the alleged violation. 18 U.S.C. § 1514A(b)(2)(D). Rowland's last date of employment with Prudential was July 1, 2003, which is the date of accrual for this cause of action. Rowland did not file her SOX charge with the DOL until July 2004 and September 2004, far beyond the 90 day time period. (Response, Ex. B).[FN5]

FN5. These filings with the DOL are referred to in the First Amended Complaint at ¶ 4 and are central to Plaintiff's SOX claim. Thus, the Court may consider them on a motion to dismiss if offered by the Defendant. *See U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003). Here, it is Plaintiff who fails to allege the dates of the DOL charges in the First Amended Complaint, but offers the charges as Exhibits in her Response (Dkt.128). Movants are in accordance with the dates and acknowledge the DOL charges in the Motion to Dismiss (Dkt.124) by citing to Plaintiff's original Complaint.

Furthermore, Plaintiff also alleges §§ 1102 and 1107 claims which deal with the tampering with and retaliation against a witness, victim, or informant by killing or attempting to kill, using physical threat or force, or using intimidation or threats against another person. 18 U.S.C. §§ 1512-1513. Plaintiff alleges that Defendants "tampered with records" and that she was "harassed ... because of the statutory protected disclosure[ ] to the EEOC, NASD, SEC, Federal and State agencies." Such allegations do not state a claim arising under §§ 1102 and 1107. Accordingly, the Court will dismiss Plaintiff's Ninth Claim.

7. ***Plaintiff's Family Medical Leave Act ("FMLA") claims***

Plaintiff's final claims arise under 29 U.S.C. § 2615(a)(1), making it unlawful for "any employer to interfere with, restrain, or deny the exercise of or attempt to exercise, any right provided under this subchapter" and 29 U.S.C. § 2615(a)(2), making it unlawful for "any employer to discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by this subchapter." These claims fail against PFI and PI because they have no employment relationship with Plaintiff. To assert a FMLA claim, a plaintiff must be entitled to the protections of the FMLA, which covers "eligible employees" (29 U.S.C. § 2612(a)). Thus, a plaintiff must establish that he or she is an "eligible employee." *See Cavin v. Honda of America Mfg., Inc.*, 346 F.3d 713, 719 (6th Cir.2003) (plaintiff must establish that he is an "eligible employee" to assert an

interference claim.").

An "eligible employee" is an "employee who has been employed (i) for at least 12 months by the employer *with respect to whom leave is requested;* and (ii) for at least 1,250 hours of service with *such* employer during the previous 12-month period." 29 U.S .C.A. § 2611 (emphasis added). *See also Bachelder v. America West Airlines, Inc.*, 259 F.3d 1112, 1118 (9th Cir.2001). Plaintiff incorrectly argues that she "does not have to establish an 'employment relationship with PFI or PI" ' to assert a claim under the FMLA. (Response at 17). Plaintiff has no cause of action against those with whom she has not been employed and she alleges that she was employed only by PSI/PEG and WS. (FAC ¶¶ 1, 7).

As against PEG, Plaintiff's employment terminated on July 1, 2003. (FAC ¶ 7). The FMLA claims are based on Plaintiff's attempt to return to work at the end of her medical leave (Response at 17), which occurred beginning in February 2004 and ultimately ended in her "constructive termination." (FAC ¶¶ 35, 113). Plaintiff's claim did not accrue until after her employment ended with PEG. Accordingly, the Court will dismiss Plaintiff's Tenth and Eleventh Claims.

F. ***Plaintiff's Motion for Entry of Default as to Prudential Financial, Inc and Plaintiff's Motion for Preclusion of Defenses and Award of Expenses***

Plaintiff filed a Motion for Entry of Default as to Defendant Prudential Financial, Inc. (Dkt.127) and a Motion for Preclusion of Defenses and Award of

Expenses (Dkt.127). Plaintiff seeks to "(1) enter default against Prudential Financial, Inc ... (2) deny Prudential Financial, Inc. any defense or objection which was available to Prudential Financial Inc., when Prudential Financial filed its *Rule 12* motion in April 2005; *and* (3) award Plaintiff with expenses, including attorney fees because of Prudential Financial, Inc.'s repeated noncompliance to this Court's Orders." (Dkt.127, p. 3).

The Court, having dismissed the Complaint as to Defendant PFI, will deny Plaintiff's Motion for Entry of Default (Dkt.127) and a Motion for Preclusion of Defenses and Award of Expenses (Dkt.127) as moot.

H. ***Plaintiff's Motion to Unseal Document***

Plaintiff filed a Motion to Unseal Order at Docket 52. (Dkt.130). Because the Court's June 3, 2005 Order (Dkt.52) was not filed as a sealed order, the Court will deny Plaintiff's Motion to Unseal Document (Dkt.130) as legally frivolous.

Accordingly,

IT IS ORDERED that Plaintiff's "Motion for Court Action Civil Procedure Complaint." (Dkt.107) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Status of Pending Motions (Dkt.108) and Plaintiff's Motion for Pending Motion Notification (Dkt.111) are GRANTED to the extent of this Order.

IT IS FURTHER ORDERED that Plaintiff's Motion

for Joinder (Dkt.118) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion to Add Wachovia Corporation (Dkt.120) is DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Relief pursuant to Rule 60(b)(3) (Dkt.120) is DENIED.

IT IS FURTHER ORDERED treating Plaintiff's "Motion to Strike Motion to Dismiss" (Dkt.128) as Response to Movants' Motion to Dismiss, and treating Movants' "Opposition to Plaintiff's Motion to Strike" (Dkt.135) as a Reply to Movants' Motion to Dismiss.

IT IS FURTHER ORDERED that Defendant Prudential's Request for Judicial Notice (Dkt.136) as to Exhibit T is GRANTED.

IT IS FURTHER ORDERED GRANTING Movants' Motion to Dismiss (Dkt.124) and DISMISSING the First Amended Complaint as to Defendant Prudential Financial, Inc.

IT IS FURTHER ORDERED that Plaintiff's Motion for Entry of Default as to Defendant Prudential Financial, Inc. (Dkt.127) and Plaintiff's Motion for Preclusion of Defenses and Award of Expenses (Dkt.127) are DENIED as moot.

IT IS FURTHER ORDERED that Plaintiff's Motion to Unseal Order (Dkt.130) is DENIED as legally frivolous.

The Court having denied Plaintiff's Motion for

Joinder (Dkt.118), Motion to Add Wachovia Corporation (Dkt.120), and Motion for Relief (Dkt.120) and having dismissed all Defendants, IT IS FURTHER ORDERED that the Clerk of the Court enter judgment accordingly.

DATED this 2nd day of July, 2007

Earl H. Carroll
United States District Judge

2:04-cv-2287

[END OF DISTRICT COURT DOCKET #143]

Case 2:04-cv-02287-EHC Document 83 Filed 04/28/06

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arlene D. Rowland, Plaintiff, vs. Prudential Financial, Inc.; Wachovia Corporation, Defendants.	No CIV 04-2287 PHX-EHC **ORDER**

On June 2, 2005, the Court stayed the proceedings in this case pending the outcome of the proceedings before the National Association of Securities Dealers ("NASD") arbitration panel. Order (Dkt. 52). The Court ordered Plaintiff to advise the Court when the NASD arbitration concluded and to file status reports every three months until this stay is lifted. Order, p. 4 (Dkt. 52). On April 24, 2006, the parties advised the Court that on April 21, 2006, the NASD issued a final Award in Arlene D. Rowland v. Prudential Securities, Inc., Case No. 03-01179. The stay in this case will be lifted.

Pending Motions

Pending before the Court are Defendant Wachovia Corporation's Motion to Dismiss for Lack of Personal Jurisdiction (Dkts. 21, 50), Plaintiff's Motion for Leave to File Second Amended Complaint (Dkt. 42), Defendants' "Motion To Extend Time to (1) Respond to Plaintiff's Motion For Leave to File Second Amended Complaint and (2) Case 2:04-cv-02287-EHC Document 83 Filed 04/28/06 Answer or Otherwise

Respond to Plaintiff's First Amended Complaint" (Dkt. 49), Defendant Prudential's Motion to Dismiss (Dkt. 24), Plaintiff's Motion for Default Judgment (Dkt. 77) and Plaintiff's Motion to Correct Docket Entry 76 (Dkt. 79). The Court addresses each motion in turn.

Defendant Wachovia's Motion to Dismiss

Defendant Wachovia Corporation has filed a Motion to Dismiss based on a lack of personal jurisdiction. (Dkts. 21, 50). Defendant Wachovia Corp. argues that Plaintiff has essentially named the wrong party. Wachovia Corp. claims that it is not subject to personal jurisdiction in Arizona because it has neither engaged in the systematic and continuous contacts warranting general jurisdiction, nor did Wachovia Corp. have any contacts in Arizona warranting specific jurisdiction. Motion, p. 2 (Dkt. 21). Wachovia Corp. argues, "Plaintiff's assertion that Wachovia Corporation has offices, conducts business, and is found in the District of Arizona is patently untrue." Id. "Wachovia Corporation, which is the named defendant, is neither incorporated nor headquartered in Arizona." Id. Wachovia Corp. claims that Plaintiff is an employee of Wachovia Securities Financial Holdings, LLC and Wachovia Corp. is merely an owner of that company. Plaintiff filed a Response, arguing that Wachovia Securities Financial Holdings, LLC is a "business unit" of Wachovia Corporation and "Plaintiff continues to received [sic] income from business units of Wachovia Corporation related to her status as an employee." Response, p. 4 (Dkt. 53). Plaintiff argues that "Wachovia Corporation has 'control' or 'financial benefit' of its business unit 'Wachovia Securities, LLC' and also incurs 'vicarious infringement.'" Id.

Standard

Where the defendant is the moving party, the plaintiff bears the burden of showing personal jurisdiction is proper. *Dole Food Company, Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2003). Where the motion is decided without an evidentiary hearing, the court asks only whether the "pleadings and affidavits make a prima facie showing of personal jurisdiction," with any conflicts between the parties resolved in the plaintiff's favor. Id.

If, as here, there is no applicable federal statute, the court applies the personal jurisdiction statute of the state in which it sits. *See Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). Under Arizona law, a court may exercise personal jurisdiction over parties to the extent permitted by the United States Constitution. Ariz. R. Civ. P. 4.2(a). The Constitution allows a court to exercise jurisdiction over nonresident parties who have minimum contacts with the forum state such that suit in the forum state does not offend "traditional notions of fair play and substantial justice." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).

There are two types of personal jurisdiction: specific and general. Specific jurisdiction is proper if a non-resident defendant has (1) purposefully taken action in the forum state and received the benefits of the forum state's laws; (2) the claim arises out of that action; and (3) exercising jurisdiction is reasonable. *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1484 (9th Cir. 1993). General jurisdiction exists when a non-resident has substantial, continuous and

systematic contacts with the forum state. *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 446 (1952). As a threshold issue, both specific and general jurisdiction require plaintiff to prove the non-resident had minimum contacts with the forum state.

Discussion

Plaintiff alleges that Wachovia Corporation, indirectly through subsidiaries, owns . . . 62% [of Wachovia Securities Financial Holdings, LLC]." Response, p. 7 (Dkt. 38). Plaintiff claims that this ownership interest justifies the exercise of personal jurisdiction over Defendant Wachovia Corporation. When testing personal jurisdiction, the actions of a subsidiary are not automatically attributed to the parent. *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001). Those actions are only attributable to the parent if the parent company treats the subsidiary company as its alter ego or the subsidiary acts as its agent. *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). The alter ego exception requires plaintiff to show "that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist." *American Telephone & Telegraph Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996) (citations omitted). The Ninth Circuit found this requirement was not met even though the parent reviewed and ultimately approved the subsidiary's major decisions, placed its directors on the subsidiary's board, and was otherwise an active parent company. *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980). Thus, the alter ego exception requires a high degree of unity between the

parent and subsidiary.

Wachovia Corporation's ownership interest in Wachovia Securities Financial Holdings, LLC does not, without more, permit the exercise of personal jurisdiction over Defendant Wachovia Corporation. Plaintiff has not alleged any conduct attributable to Wachovia Corporation justifying the exercise of personal jurisdiction in this case. The Court will grant Defendant Wachovia Corporation's Motion to Dismiss. (Dkts. 21, 50).

Plaintiff's Motion for Leave to File Second Amended Complaint

Subsequent to Defendant Wachovia Corporation's Motion to Dismiss, Plaintiff filed a Motion for Leave to File Second Amended Complaint. (Dkt. 42). The Second Amended Complaint seeks to add new parties [FN 1] and a new claim titled "Claim For Relief for Breach of the Duty of Good Faith and Fair Dealing, Fraud." Motion, p. 5 (Dkt. 42).

Leave to amend "shall be freely given when justice so requires," Fed. R. Civ. P. 15(a), "and this policy is to be applied with extreme liberality." *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). This relaxed standard applies with particular force to pro se litigants. *Pangburn v. Culbertson*, 200 F.3d 65, 70 (2d Cir. 1999). Defendants have not had an opportunity to respond to the motion. The Court will

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FN 1 Notably, the Second Amended Complaint adds Wachovia Securities Financial Holdings, LLC as a Defendant.

consider the motion once Defendants have had the opportunity to respond.

Defendants' Motion To Extend Time to File Answer

When Plaintiff filed her Motion For Leave to File Second Amended Complaint, both Defendants filed a Motion To Extend Time to (1) Respond to Plaintiff's Motion For Leave to File Second Amended Complaint and (2) Answer or Otherwise Respond to Plaintiff's First Amended Complaint (Dkt. 49). The Court will grant Defendants' Motion. Defendants shall have ten days from the date of this order to respond to Plaintiff's Motion For Leave to File Second Amended Complaint.

Defendant Prudential's Motion to Dismiss Or Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration

Remaining as a pending motion is Defendant Prudential's Motion to Dismiss Or Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration. (Dkt. 24). The Court granted the Motion, in part, when it stayed proceedings pending the outcome of the arbitration. The Motion also argues that certain claims should be dismissed because they fail to state a claim upon which relief can be granted or are otherwise inapplicable to the facts of this case. Because there has not been a ruling on Plaintiff's Motion For Leave to File Second Amended Complaint, Defendant's Motion will be denied without prejudice to re-urging pending the ruling on Plaintiff's Motion to Amend.

Plaintiff's Motion for Default Judgment

On April 7, 2006, Plaintiff filed an Application for Default Judgment. (Dkt. 75.) The Clerk of Court did not enter default against Defendants. (Dkt. 76.) On April 20, 2006, Plaintiff filed a Motion for Default Judgment. (Dkt. 77.) Entry of default is a prerequisite for the entry of judgment upon that default. *See Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998)("When a party 'has failed to plead or otherwise defend' against a pleading listed in Rule 7(a), entry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b)."). Entry of default has not been entered by the Clerk. Both Defendants have pending Motions to Dismiss. (Dkts. 24, 50.) Because Defendants have not "failed to plead or otherwise defend" against this lawsuit, entry of default is not appropriate. Thus, default judgment is not appropriate. Plaintiff's Motion for Default Judgment will be denied.

Plaintiff's Motion to Correct the Clerk's Docket Entry #76

On April 20, 2006, Plaintiff filed a Motion to Correct the Clerk's Docket Entry #76. (Dkt. 79.) The Motion asks the Clerk to reconsider its decision and "requests that the Court Clerk endorse and issue the 'Entry of Default.'" Motion, p. 2 (Dkt. 79.) As discussed above, entry of default is not appropriate in this case. Plaintiff's Motion will be denied.

Accordingly,

IT IS ORDERED that the stay is lifted in this case.

IT IS FURTHER ORDERED GRANTING Defendant Wachovia Corporation's Motion to Dismiss

based on a lack of personal jurisdiction. (Dkts. 21, 50).

IT IS FURTHER ORDERED GRANTING Defendants' Motion To Extend Time to (1) Respond to Plaintiff's Motion For Leave to File Second Amended Complaint and (2) Answer or Otherwise Respond to Plaintiff's First Amended Complaint (Dkt. 49). Defendants shall have ten days from the date of this order to respond to Plaintiff's Motion For Leave to File Second Amended Complaint.

IT IS FURTHER ORDERED DENYING Defendant Prudential's Motion to Dismiss (Dkt. 24) without prejudice to re-urging pending the ruling on Plaintiff's Motion to Amend.

IT IS FURTHER ORDERED DENYING Plaintiff's Motion for Default Judgment. (Dkt. 77.)

IT IS FURTHER ORDERED DENYING Plaintiff's Motion to Correct the Clerk's Entry, Docket #76. (Dkt. 79.)

IT IS FURTHER ORDERED that any answer will be due ten days after the Court's ruling on Plaintiff's Motion For Leave To File Second Amended Complaint or the ruling on any subsequent motion to dismiss filed by Defendants.

DATED this 27th day of April, 2006.

Earl H. Carroll
United States District Judge

[END OF DISTRICT COURT DOCKET #83]

[EEOC Form 5 (5/01); Dist.Ct. Exhibit 944]

CHARGE OF DISCRIMINATION

AGENCY [ ] FEPA [X] EEOC

CHARGE NUMBER 350A300777

State or local Agency, if any: Arizona Civil Rights Division and EEOC

NAME Ms. Arlene D. Rowland ***
NAMED IS THE EMPLOYER, ***WHO
DISCRIMINATED AGAINST ME ***
NAME Prudential Securities (480) 991-7575

NUMBER OF EMPLOYEES, MEMBERS Cat D (500 +)

STREET ADDRESS CITY, STATE AND ZIP CODE
8777 N. Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

COUNTY 013

***

CAUSE OF DISCRIMINATION BASED ON (*Check appropriate box(es)*)

[] RACE [] COLOR [X] SEX [] RELIGION
[] NATIONAL ORIGIN [X] RETALIATION
[]AGE [] DISABILITY [] OTHER (*Specify*)

DATE DISCRMINATION TOOK PLACE

EARLIEST [blank] *LATEST* 09/01/2002
[X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*
Personal Harm: During my tenure with Prudential Securities I have been subjected to different terms and conditions of employment and verbal harassment by Kent Varner and Thomas Zirbel. Specifically Varner and Zirbel gave better and large leads and accounts distribution to the male brokers. As a result there was a negative impact on my income and potentional "assets under management awards." I complained to both Varner and Zirbel that I thought there was preferential treatment towards the male brokers that had a direct impact upon the female brokers. After I complained to them, they avoided me and did not provide any marketing or sales support like thy did prior to my complaints. In addition, I lost some account opportunities and was not considered for a job opening as Branch Assistant Manager.

Statement of Discrimination: I believe I and a group of females have been discriminated against on the basis of our sex, female, and that I have been retaliated against for complaining of a protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully, with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local

Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct. Date: 12/27/02. Charging Party /s/ Arlene D. Rowland. SIGNATURE OF COMPLAINANT. SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year) [blank].

[EEOC Form 283; Dist.Ct. Exhibit 944]

CHARGE QUESTIONNAIRE

***

NAME Arlene *** Rowland DATE 12-27-02

***

I believe I was discriminated against by (Check those that apply) [X] EMPLOYER *** APPROX. NO. EMPLOYED BY THIS EMPLOYER over 5,000 NAME Prudential Securities ADDRESS 8777 N. Gainey Center Drive City, State, Zip Scottsdale, AZ 85258 Phone Number 480-991-7575 *** If you checked "Employer" above, are you now employed by the Employer that you believed discriminated against you? YES From 4-***-96 (date) Financial Advisor (current position) *** What action was taken against you that you believe to be discriminatory? What harm, if any, was caused to you or others in your work situation as a result of that action? (if more space is required, use reverse.)

"The Scottsdale Branch Managers Kent Varner & Thomas Zirbel consistently distributed leads and large, lucrative accounts to male brokers which negatively impacted by income and potential 'Assets Under Management Awards.' The female brokers, including myself, did not receive our fair share of assets and leads and marketing budgets; and in some cases did not receive any accounts when some brokers left - yet male trainee brokers even received some accounts. When I complained to each of these branch managers, no change was made to.....[con't].
WHAT WAS THE MOST RECENT DATE THE HARM YOU ALLEGED TOOK PLACE? 9/2002

[EEOC Form 283; Dist.Ct. Exhibit 945]

[con't]: "distribute assets fairly, even though there were corporate policies with clear guidelines, which if followed, would have caused me to receive far more assets & therefore opportunity for more income and referrals. After complaining, each manager avoided me and did not provide any marketing or sales support. Tom Zirbel would toss his newsletter into my in-box and not respond to my greeting of 'good morning' after I complained. One time he slammed by door upon exiting my office and when I confronted him about his unprofessional behavior and observation of 'never treating a male broker' in that manner, he became hostile and called me names.

In July of 2002, I asked our Retirement Securities Dept. to bid on a very large Deferred Compensation (457) Retirement Plan and I encountered discriminatory treatment when Tom Jackson & Augie

Urgola said they wanted me to partner/share the business with a male broker. When I refused, they told me that they did not have to bid on the contract (RFP). When I complained to them & my manager (Tom Zirbel) they said they may not bid competitively. When the bid was submitted, my name was totally left off the proposal. This was a huge retirement plan for Union County, NJ and would have provided at least $50,000 a year income, increasing each year as assets built up.

When an opening for Branch Assistant Manager opened up, I requested consideration and training and was refused by Tom Zirbel. A male was trained (a new hire) and "***" (*page cut off*).

[EEOC Form 283; Dist.Ct. Exhibit 946]

[con't]: "In 2001, Tom Zirbel asked me if I wanted to develop cross-marketing opportunities with our North Scottsdale Office. I responded Yes, and in fact I had great success in doing the same type of marketing while working at the Prudential Office in Princeton, NJ.' Without further discussion, he took Peter (a new hire broker-trainee to our office) and Tim (recently hire from another firm) to the North Scottsdale Prudential Complex and left me out. This was an enormous marketing opportunity for Tim and Peter, yet I was left out even though I had prior experience and success at the Princeton Office, doing the same thing. I feel I was left out because I was female. When I asked Tom Zirbel, our Manager, why he excluded me, he refused to answer.

I was refused a marketing budge, yet males that had comparative or less production received support of marketing initiatives. In December 2001, Kirk Taylor, a male broker with less production than me was able to send holiday newsletters through the office postage meter, yet I was refused postage for holiday cards. When I brought this to the manager's attention, he got angry, called me a Bitch and threw a book of stamps at me.

ETC.

Harm caused: Less compensation, less managed assets, led to unbearable stress ***"

[EEOC Form 283; Dist.Ct. Exhibit 947]

[con't]: **EEOC Intake Questionnaire Attachment**

1. What reason did your employer give you for what happened to you? They didn't give reasons, they got angry and retaliated.

2. Name others who were treated similarly to you?

Name	Sex	Race	National Origin	Job Title
Pina Carino	F	W		Financial Advisor
Ruth Kerper	F	W		Financial Adv.
Rhonda Rommel	F	W		Financial Adv.
Stacy	F	B		Sales Assistant

3. Name others who did the same thing you did, but were treated differently?

Name	Sex	Race	National Origin	Job Title
Kirk Taylor	M	W		Financial Advisor

Numerous males in the office.

4. Do you have witness to the unfair actions described in EEOC Form 283? If so provide their names, addresses and telephone numbers.

Witness Name	Address	Phone Number
Pina Carino	*** Scottsdale, AZ	480-***
Ruth Kerper	*** Phoenix, AZ	602-***
Donna Bearss	*** Surprise, AZ *** witness to 457 Retirement Plan discrimination	

Signature: I declare under penalty of perjury that the foregoing is true and correct. /s/Arlene Rowland Date 12-27-02

[EEOC Form 161-B 10/96; Dist.Ct. Exhibit 942]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE
(ISSUED ON REQUEST)

To: Ms. Arlene Rowland *** From: Equal Employment Opportunity Commission 3300 N. Central Ave. #690 Phoenix, AZ 85012-1848 ***
Charge Number 350-A3-00777 ***

NOTICE TO THE PERSON AGGRIEVED: Title VII of the Civil Rights Act of 1964 ***: This is you Notice of Right to Sue, issued under Title VII *** based on the above-numbered charge. *** must be filed in federal or state court WITHIN 90 DAYS from your receipt of this Notice. ***(The time for filing suit based on a state claim may be different.) *** [X] Less

than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge. [X] The EEOC is terminating its processing of this charge.***

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violation) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.
***
On behalf of the Commission Susan L. Grace JAN 08 2003 (date mailed) for Charles D. Burtner, District Director. cc: Prudential Securities

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[EEOC Form 5 (5/01); Dist.Ct. Exhibit 954]

CHARGE OF DISCRIMINATION

AGENCY [ ] FEPA [X] EEOC

CHARGE NUMBER 350-2004-04353

State or local Agency, if any: Arizona Civil Rights Division and EEOC

NAME Ms. Arlene D. Rowland ***
Named is the Employer, Labor Organization,

Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

NAME **Prudential Equity Group, LLC (PEG)**
NUMBER OF EMPLOYEES, MEMBERS 500 or More
Phone No. *** (480) 991-7575
STREET ADDRESS CITY, STATE AND ZIP CODE
One New York Plaza, New York, NY 10292

NAME **Prudential Insurance Co. America, Disability Management Services** ***
P.O. Box, 13480, Philadelphia, PA 19101 ***

NAME **Prudential Insurance Company (Group Insurance Programs)** *** 751 Broad Street, 18 Plaza, Newark, NJ 07102-3777 [same Charge - Dist.Ct. Exh.955] ***

NAME **Wachovia Corporation** *** 301 South Tryon Street, Charlotte, NC 28288 [same Charge-Dist.Ct. Exh. 955] ***

NAME **Wachovia Securities, LLC** *** 901 East Byrd Street, Richmond, VA 23219 [same Charge - Dist.Ct. Exh. 956]***

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

[] RACE [] COLOR [X] SEX [] RELIGION
[] NATIONAL ORIGIN [X] RETALIATION [X] AGE [X] DISABILITY [] OTHER (*Specify*)

DATE(S) DISCRMINATION TOOK PLACE

Earliest [blank] Latest 07/06/2004
[X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*
See attached (9 pages)

I believe I have been discriminated against and retaliated against because of my sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended, because of my age in violation of the Age Discrimination in Employment Act of 1967, as amended, and because of my disability, in violation of the Americans with Disabilities Act of 1990 as amended.

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - *When necessary for State and Local Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Date: Jul 06, 2004. Charging Party /s/ Arlene D.

Rowland. SIGNATURE OF COMPLAINANT. SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year) [blank].

[EEOC Local Use Form 283; Dist.Ct. Exhibits 957-963]

INTAKE QUESTIONNAIRE (rev. 7/2003)

***

NAME Arlene *** Rowland ***

I believe I was discriminated against because of :

[ ]Race ? [ ] Color [] Religion [] National Origin [X] Age

[X] Disability [X] Sex []Pregnancy [X] Retaliation for Filing EEOC Complaint 12-27-02 & not settling on 3-25-04 Mediation [X] Other Invasion of Privacy

***

Name others who were treated like you:

Discrimination / Harassment / Retaliation ***

NAME	JOB TITLE	RACE	*** SEX	AGE
Pina Carino	Financial Advisor		F	35
Ruth Kerper	Financial Advisor		F	87
Rhonda Rommel	Financial Advisor		F	?
Tonya Garcia	Receptionist	H	F	?
Stacy S.	Sales Assistant	B	F	?
Brett Sizemore	Financial Advisor		M	?

***

Who are your witnesses? ***

1. Pina Carino Financial Advisor *** What will #1 tell us?

Also encountered abuse after filing EEOC Claim + pressure to settle, etc.

2. Ruth Kerper Financial Advisor***What will #2 tell

us?
Also encountered abuse after filing EEOC Claim + pressured to settle in mediation and attempt to forcefully remove from office + make retire.
3. D *** Witness to abusive mediation, etc.
Janice Even *** Witness to abusive mediation process, etc.
Brett Sizemore *** Witness to mediation scene.
***
X Signature /s/ Arlene D. Rowland X Today's date 7-1-04
***

12. Have you asked for a reasonable accommodation from your employer (anything to help you perform your job, e.g. modification of equipment, change in job duties, schedule change, etc.)? Yes [X] No

If yes, describe the circumstances, including the following:

a. Approximate date of request(s): 2/04

b. Who did you ask for an accommodation? Prudential Insurance - Disability

c. What accommodation did you ask for? Help with transition to back to work as described in Insurance Contract
***

e. What was the employer's response? Go find a job somewhere else where it is *** since it seems that your problem was that office (discrimination / hostility / harassment)

[EEOC Form 5 - 9 Page Attachment to July 2004 EEOC Complaint; Dist.Ct. Exhibit 965-973]

"2nd EEOC COMPLAINT - JULY 1, 2004

***

RETALIATION, DISCRIMINATION, HARASSMENT
TITLE VII, ADA, ADEA, EPA
Age, Disability, Gender

***

I have experienced extreme retaliation, more discrimination, abuse, harassment, intimidation *** invasion of privacy of medical records, since my attorney filed the claim, and the abuse has recently escalated since I did not settle in the March 25 2004 mediation (or before) as all the other women did. ***

On March 26, 2004, the next day after a failed attempt to mediate my NASD EEO discrimination complaint, Prudential Insurance stopped an appeal of benefits (SEE ATTACHED LETTER B) and required a heightened scrutiny of my medical records, requiring *** the first time and required *** contrary to the statements ***. This was not done prior to the failed mediation. Then just days after *** (for the first time) sent *** to Prudential Insurance, the insurance company shared them with *** Prudential Equity Group *** even though I had updated my medical release form (SEE ATTACHED C) to my employer and also notified them many times in both writing and on the phone (ATTACHED INSURANCE PHONE LOG D). ***

Prudential Equity Group *** my complete medical records *** is just a pretext to hide their devious retaliatory motive as they cause me great pain and

embarrassment by recklessly copying and distributing very private medical records ***to punish me for filing an EEOC complaint ***My attorney told me of the threats in an e-mail, a few days after mediation (ATTACHED E).

On the same day that I arrived home from the failed mediation, there was a cancellation of my employee insurance plans (dental, vision, accident and life insurance for myself, my husband and daughter). *** on my husband's insurance papers it stated I was "terminated" (ATTACHED S 2). *** the bill was not possessed on the usual monthly date (*** ATTACHED S-4), it was also retro active to February 28, 2004. I had no idea I was without insurance coverage those three weeks. ***

Prudential Equity Group and Prudential Insurance are also using information from my medical file to interfere with *** my right to engage in *** arbitration *** since they are copying and attaching medical information to motions that the arbitration panel will be ruling on in the next few days *** acquired by unlawful civil subpoenas (ATTACHED T) that still have objections pending, and a quash motion pending (ATTACHED F). *** My EEO discrimination complaints *** predate all medical treatments *** While I was working in the discriminatory and hostile work environment, I was not under medical treatment for anything at all ***.

They are interfering with my medical treatment, annoying my doctors *** Even after I asked Prudential Equity Group to stop contacting my doctors during an official NASD telephone [arbitration]

conference hearing, one of their attorneys, Ms. Broyles, again called Dr. *** and questioned and annoyed him about the amount of the subpoena bill. (SEE ATTACHED E-MAILS G).

Prudential Equity Group still has not reimbursed me for a $300 doctor subpoena processing bill *** I am still on medical leave without income and Prudential Insurance stopped paying me disability payments six months ago ***it is causing a financial hardship. ***

Prudential Insurance cut off my computer access to *** when I asked on the call-in line for the HIPAA contact address to file a written complaint with Prudential Insurance on May 28th, 2004 (SEE ATTACHED Q), regarding privacy and them sharing my medical records with Prudential Equity Group *** A woman who answered the phone *** told me that I shouldn't even be calling in since I had an attorney, and was suing. I had to explain to her that the attorney was for my EEO discrimination case, and that I didn't have any lawsuits against the insurance company. For some reason, there must be some kind of a special note on my insurance file to alert *** that I have an EEO claim against my past employer [Prudential Securities, Inc.]. ***

This total disregard for privacy of my medical records *** is negatively interfering with me getting proper legal representation *** It has totally turned my case into a huge mess that seems to be all about "medical records" rather than employment law violations and discrimination. ***

Prudential's *** Mediation seemed like a "sham" and

appeared to be no more than a *** with interrogation-like questioning going on for hours about *** I was asked about the details of *** a hysterectomy that I had in June 2003 and *** my symptoms, past medical history, whether other family members *** and even about my husband's medical ***.

I was extremely embarrassed when the mediator started to read aloud some medical information from my records during the mediation, in front of everyone, from paperwork given to her by Prudential Equity Group. ***

During the March 25, 2004 mediation *** the mediator *** made jokes about my panel members being old and incapable of understanding those discrimination statistics and analysis that my experts have reported, that those "old guys" won't have a modern appreciation and understanding of professional women and current discrimination laws, and even went so far as to ask me, "wouldn't I just like to retire and take some sort of retirement package," rather than go back to work. *** I was not interested in retiring *** and another woman broker in my office is 87 years old and still working. ***

When Prudential *** recently produced "discovery" *** I saw paperwork that showed although I have been on medical leave *** my firm (now Wachovia) is continuing to charge me monthly parking garage fees and monthly cable usage fees which has created a large debit in my payroll account, which will be charged against my first payroll check when I return to work. Ruth Kerper received a large payroll debit notice about two weeks before her mediation of February

2004 ***.

As a part of my broker sales work, over many years, I was able to create a recurring annual stream of revenue of about $22,000 *** Prudential *** stopped payments. *** According to NASD regulations, I am entitled to collect income from previous recurring revenue streams that I built with past sales work, as long as my securities licenses remain current. Prudential Securities or Wachovia Securities has not paid me one cent of the recurring revenue ($22,000/yr.) and hasn't even applied any of those parking or cable expenses towards that revenue *** harassment, intimidation and retaliation, since a group of females in the office filed EEOC claims. ***

Prudential *** stopped paying *** to make it too difficult to pay for my legal expenses. *** After the failed mediation in March 2004, my legal bills and costs suddenly escalated *** and I was even threatened in mediation, email, and regular mail that the expenses would be huge if I didn't settle (ATTACHED J).

Although my disability insurance contract with Prudential Insurance provides for back to work assistance *** they won't help with any back to work program *** they just write that I should look for work somewhere else (ATTACHED L) since it seems to them that all my health troubles are because of the hostile environment at the Scottsdale Prudential Securities office ***.
***
March 9, 2004 "discovery" produced by Prudential *** revealed age discrimination and the bypassing of an accounting system (HARP) to minimize the actual

appearance of discrimination in the data that headquarters monitors. *** The data confirms that there was a pattern of age discrimination when the accounts and assets were distributed by the branch manager, and that data distribution pattern now supports the various negative biased comments and jokes that the branch manager made about old people. ***

I did some research on the internet, and I was surprised to find that 353 Prudential Property and Casualty employees had filed discrimination cases in New Jersey and an investigative report by WABC NY Channel 7 Eye Witness News uncovered a scheme involving fraud, collusion, and extortion with the way Prudential forces settlements of employee discrimination cases. I believe that the women in my office and me have experienced some of the same tactics described in these articles (ATTACHED O). ***

"SOX" VIOLATIONS *** Prudential *** has interfered with and delayed the discovery *** which has been ordered to be produced. *** They lie about not having things that I know were in the office when I worked there, and they have been submitting "altered" documents with misleading information, and all of this greatly interferes with my ability to present the evidence necessary for a successful discrimination case. ***

I was told by Prudential's attorney that the Arizona state laws about medical record privacy and proper subpoena delivery, don't apply to me. ***

The new Sarbanes-Oxley Act (SOX) (legal article

attached v) passed in December 2002 provides EEOC with the ability to fine and sanction Prudential and Wachovia Section *** of the SOX Act as follows: ***

During the course of "discovery" many of the documents produced to us women were altered, "sanitized," misleading, "not available," delayed for over a year when the NASD regulation is 30 days, some critical data produced the day before mediation, statistical data printed out on 400 sheets of paper with 10,000 lines with refusal to simply send the spreadsheet data in electronic format, broker data produced with non-existent brokers to skew evidence, accounting system (HARP) for asset distribution bypassed for 80% of assets, lists of brokers in the office that included staff to skew production and asset averages, conflicting broker revenue and income data from report to report produced by Prudential, male broker dates of hire misstated to appear to have more seniority, common documents missing, etc. Prudential *** wont' produce the Affirmative Action Plan since they claim during NASD discovery hearings that they are not an AAP employer, yet advertise they are on the Internet job site and it is also stated in my employee handbook. Documents required to be retained for 3 years according to SEC and NASD regulations are "unavailable and missing." Video tapes of discrimination and harassment taking place are "missing" yet the AV commercial firm that typically tapes those business conferences told me that Prudential maintains an archived library of those and game me the name and phone number of the Prudential employee who arranges to have the conferences taped. ***

[EEOC Form 161 10/96; Dist.Ct. Exhibit 952]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISMISSAL AND NOTICE OF RIGHTS

To: Ms. Arlene Rowland *** From: Equal Employment Opportunity Commission 3300 N. Central Ave. #690 Phoenix, AZ 85012-1848 ***
Charge Number 350-2004-04353 ***

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON: ***

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violation of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge. ***

NOTICE OF SUIT RIGHTS

***

This will be the only notice of dismissal and of your right to sue that we will send your. You may pursue this matter further by bringing suit in federal or state court against the respondent(s) named in the charge. If you decide to sue, you must sue **WITHIN 90 DAYS** from your receipt of this Notice. Otherwise your right to sue based on the above-numbered charge will be lost.

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for: any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.
***
On behalf of the Commission /s/ Susan L. Grace JUL 30 2004 (date mailed) Acting Director. ***

[EEOC Form 5 (5/01); Dist.Ct. Exhibit 977]

CHARGE OF DISCRIMINATION

AGENCY [ ] FEPA [X] EEOC

CHARGE NUMBER 350-2005-00893 [Nov. 30, 2004]

State or local Agency, if any: Arizona Civil Rights Division and EEOC

NAME Ms. Arlene D. Rowland ***
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name **Wachovia Corporation** *** 301 South College Street, Charlotte, NC 28288 ***

Name **Prudential Financial, Inc.** *** 751 Broad Street, 18 Plaza, Newark, NJ 07102 ***

DISCRIMINATION BASED ON (*Check appropriate box(es).*)

[X] RACE [] COLOR [X] SEX [] RELIGION [] NATIONAL ORIGIN [X] RETALIATION [X] AGE [X] DISABILITY [X] OTHER (*Specify*)

DATE(S) DISCRMINATION TOOK PLACE

Earliest [blank] Latest 11-15-2004
[X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):*

Personal Harm: Ongoing discrimination and encountering prejudice and bias about my disability and applying for disability benefits. Experiencing an extreme retaliatory attack because I file EEOC complaints. Experiencing intimidation, threats, harassment because I am an older woman who became disabled and I participated in an EEO mediation. Firms are interfering with my right to a fair and equitable resolution of my EEOC complaints by *** ignoring my requests for assistance, telling me to look for work elsewhere rather than being of assistance with back-to-work transition.

In addition I believe I was retaliated against in violation of Sarbanes Oxley ("SOX") complaint, DOL complaint, HIPAA complaint and accounting fraud. See attached complaint written by the Charging party ***

Statement of Discrimination: I believe I have been discriminated against in violation of the Americans with Disabilities Act of 1990. I believe I have been discriminated against because of my age in violation of the Age Discrimination in Employment Act of 1967. I believe that I have been discriminated against because of my sex, female, and race, American Indian, in violation of Title VII of the Civil Rights Act of 1964, as amended. I believe I was retaliated against for having filed previous charges of discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - *When necessary for State and Local Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.
Date: Nov. 30, 2004. /s/ Arlene D. Rowland.
Charging Party Signature. SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year) [blank].

[EEOC Form 5 - 2 Pg. Attachment; Dist.Ct. Exh. 978-79]

STAMPED: RECEIVED EEOC PHOENIX DISTRICT OFFICE 2004 NOV 30 PM 3:50

On **September 30, 2004**, I received a letter from Wachovia Corporation advising me of a distribution of shares, that was an award that I earned while employed by Prudential Securities, for achieving and exceeding certain employment goals in past years, of a mutual fund that were to be transferred to my securities investment account at Wachovia Securities. *** The check never arrived and each time I called Wachovia about the check, I was told by different people that my account had been closed and they would reopen my [employee] investment account and then my **$11,900** would be released. It never was. My investment account continued to be closed and re-opened *** until I complained to the SEC. This employment bonus was withheld from me and my investment account was repeatedly opened and closed after I filed an EEOC complaint against Wachovia in **July 2004**. I never had problems with that account in the past and I only use that account to liquidate employment bonuses and awards.

Twice in July 2004 I called Prudential Insurance, a benefit provider in my employer's benefit program (Wachovia Corporation) and my phone calls were not returned *** I also wrote *** never did call me back.

Beginning in July 2004, I complained to Wachovia about privacy violations in my employee benefit insurance plan when I found that Prudential Insurance shared medical information with Prudential Securities *** and all of my complaints have been ignore by

Wachovia. Prudential Insurance shared confidential medical information with Prudential Equity Group because I filed an EEOC complaint and they were trying to dig up information to use against me and embarrass me by disclosing information *** gynecological records.

Prudential Insurance is withholding approximately $45,000 of *** insurance *** **my very private medical information was e-mailed to a random woman.** When I wrote to my employer, Wachovia Securities and Wachovia Corporation about these problems, they do not respond.

I have requested assistance with return to work verbally and in writing, on many occasions, beginning February of 2004 and I have been ignored by both Prudential and Wachovia. *** My requests for assistance and accommodation have been ignored. ***

Both Prudential Securities and Wachovia Securities have withheld income that I have previously earned from selling mutual funds and annuities to my clients which get paid quarterly and are known as "trailers." My securities licenses are current and according to NASD regulations, I qualify to continue to receive that income, yet they have paid my earned trailers to a male broker instead. *** I had earned $22,000 recurring annual revenue from trailers over many years of financial sales work.
***
I have written to the "Ethics Officer" of both Wachovia Corporation and Prudential Financial, Inc. about this retaliatory attack, including the privacy violations, and they have not responded.

*** discrimination and retaliation ongoing.

/s/ Arlene Rowland **11-30-04**
STAMPED: RECEIVED EEOC PHOENIX
DISTRICT OFFICE **2004 NOV 30** PM 3:50

[EEOC Form 161 3/98; Dist.Ct. Exhibit 952]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISMISSAL AND NOTICE OF RIGHTS

To: Arlene D. Rowland *** From: EEOC, Phoenix District Office 3300 N. Central Ave. Ste 690 Phoenix, AZ 85012 ***
Charge Number 350-2005-00893 JB ***

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON: ***

[X] The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violation of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge. ***

NOTICE OF SUIT RIGHTS

***

This will be the only notice of dismissal and of your right to sue that we will send you. You may file lawsuit against the respondent(s) under federal law

based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this Notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.
***
On behalf of the Commission /s/ Susan L. Grace **JAN 7 2005** (date mailed) Acting Director. ***

[EEOC Form 5 (5/01); Dist.Ct. Exhibit ___]

CHARGE OF DISCRIMINATION

AGENCY [ ] FEPA [X] EEOC **[May 10, 2005]**

CHARGE NUMBER 350-2005-03211

State or local Agency, if any: Arizona Civil Rights Division and EEOC

NAME Ms. Arlene D. Rowland ***
NAMED IS THE EMPLOYER, ***WHO DISCRIMINATED AGAINST ME ***
Name **Wachovia Securities** (800) 325-5152

NUMBER OF EMPLOYEES, MEMBERS 500 or

More

STREET ADDRESS CITY, STATE AND ZIP CODE
8777 N. Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

***

DISCRIMINATION BASED ON (*Check appropriate box(es)*)

[X] RACE [] COLOR [X] SEX [] RELIGION
[] NATIONAL ORIGIN [X] RETALIATION
[X]AGE [X] DISABILITY [X] OTHER (*Specify*)

DATE(S) DISCRMINATION TOOK PLACE

Earliest [blank] Latest **05/02/2005**
[X] CONTINUING ACTION

THE PARTICULARS ARE *(If additional space is needed, attach extra sheet(s)):* **See Attached**

I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - *When necessary for State and Local Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. ***
I declare under penalty of perjury that the foregoing is true and correct.

Date: **May 10, 2005**. /s/ Arlene Rowland. Charging Party Signature. SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Month, day and year) [blank].

[EEOC Form 5 - 3 Pg. Attachment to May 10, 2005 Charge; Dist.Ct. Exh. ___]

My employer, Wachovia Securities (f/k/a Prudential Securities) continues to subject me to retaliation and is discriminating against be because I filed EEOC complaints and object to discriminatory practices. Since I participated in a March 25, 2004 unsuccessful mediation of my first EEOC complaint of 12/2002, I have encountered a relentless retaliation campaign.

1. In **February 2005**, Wachovia Corporation H.R. wrote me a 5-page letter *** for the first time since I made notification that my doctor told me to contact the firm for return-to-work assistance (2/27/04). *** A few days later, the Scottsdale Wachovia Securities branch manager, Mr. Jetter, called me and told me that he was having my office equipment packed and inventoried. I made written notice that I didn't want my office equipment packed-up since I was trying to return to work *** my items were delivered to my home against my wishes.

2. Wachovia Corporation Human Resources (the provider of my employee long-term disability insurance) failed to respond to privacy issues ** reported *** (**July 2004**) that the employee insurance provider Prudential Insurance, was violating my

privacy since 5 pages of my medical information from my disability file was e-mailed to a random woman. Also, Prudential Insurance was unlawfully sharing the information in my disability file with my past employer who I filed an EEOC complaint against on 12/2002. In **November 2004**, Prudential Insurance again logged in their DCMS Phone Log that my past employer's attorney called for information regarding my disability insurance file, and without authorization, the insurance company e-mailed 6 pages of information from my employee disability insurance file.

***

4. I called the firms' corporate ethics hot-line in **December 2004** and reported that my employee disability insurance file was being altered and being disclosed unlawfully. A report was taken, I identified myself, and I was told that I would be contacted within 4 weeks. I have not been contacted.

6. On **January 4, 2005**, Prudential Insurance finally made a correction and paid me **$34,320.50** of income that had been withheld for 22 months, because my past employer, Prudential Securities (now known as Wachovia Securities) would not submit my proper wage/earnings information *** to Prudential Insurance *** and Wachovia *** ignored my letters *** requesting help with resolving the miscalculation with an employee benefit provider. On the very next day, **January 5, 2005**, the attorney representing my past employer's defense of my first EEOC complaint (12/2002), wrote and requested ALL of my disability and medical information from the Social Security Disability income program. The HR employee who withheld the proper wage information told me that he

had reviewed my "CASE" before he returned by call about the miscalculation. The only "Case" that I had at that time was my 12/2002 EEOC complaint.

7. Both Wachovia and Prudential have failed to respond to my written requests (some by registered mail, return receipt) for interest and the Arizona labor law penalty for withholding wages past a regular pay date, on the **$34,320.50 January 2005** payment that took 22 months to correct.

***

9. A legal response from my past employer's attorney defending my EEOC claim of 12/2002, incorporated medical information from an official ADA request for accommodation (**February 2005**), violating my privacy and inappropriately using ADA medical information, and applied it to a different issue, not related to the accommodation request. ***

10. Wachovia is purposely delaying my return to work in order to diminish my established client loyalty, while the firm collects revenue from my clients and a male Financial Advisor continues to collect income from revenue that I earned from past sales of financial products that entitle me to a recurring annual stream of revenue.

11. The retaliation and discrimination has included withholding of employee benefits and programs, withholding of information, keeping secret the programs for assistance with return to work, violations of my privacy and subjecting my confidential medical information to security beaches, manually overriding automated processes to cause problems in my

employee accounts, providing deceptive employee related information, etc.

12. *** the mediation/arbitration process of my first EEOC complaint was handled in a fraudulent manner, in violation of laws and the rules and regulations of the NASD.

13. In **April 2005**, Prudential's attorney filed over 500 copies of documents with the federal court, in violation of a "confidentiality Agreement" contract protecting the information and documents pertaining to my first EEOC complaint (12/2002). Prudential sent copies to counsel representing my current employer, Wachovia. The information also contains medical information and documents, some of which Prudential obtained with an invalid subpoena and without a court order or my signed authorization, from Wachovia Corporation's employee benefit plan provider - Prudential Insurance.
***
***
15. In January 2005, my Sales Assistant at Wachovia Securities suddenly passed away. Shortly after, Prudential sent me "discovery" for my first EEOC case that was supposedly copies of my client's investment accounts. The "discovery" included my deceased Sales Assistant's personal investment account and checking account amongst the accounts. She was not ever my client and I did not manage her account. Besides being my Sales Assistant at work, we had become close friends over the years. It was very painful to receive her extensive and detailed account activity, including chares that she had incurred for flowers that she sent to me on "Boss's Day." I believe that this was purposely done to wear me down so that I abandon my

EEO claims.

Arlene D. Rowland Dated May 10, 2005 /s/Arlene Rowland

[EEOC Form 161-B 10/96; Dist.Ct. Exhibit ___]

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Ms. Arlene D. Rowland *** From: Equal Employment Opportunity Commission 3300 N. Central Ave. #690 Phoenix, AZ 85012-1848 *** Charge Number 350-2005-03211 ***

NOTICE TO THE PERSON AGGRIEVED: Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is you Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. *** must be filed in federal or state court WITHIN 90 DAYS from your receipt of this Notice. ***(The time for filing suit based on a state claim may be different.)
***

[X] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge. [X] The EEOC is terminating its processing of this charge.
***

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violation) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

***

On behalf of the Commission /s/ Chester V. Bailey JUN 08 2005 (date mailed) District Director *** cc: Wachovia Securities

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[Form: OMB No. 1215-0131 Expires 11-30-04]

[07/09/2004] Complaint of Discrimination in Employment Under Federal Government Contracts
U.S. Department of Labor

***

We will provide a copy of this complaint to the employer against whom it is filed and, when matters alleged are covered by Title VII and/or the ADA, to the U.S. Equal Employment Opportunity Commission (EEOC).

***

Non-Retaliation: OFCCP regulations, and Title VII and/or the ADA where applicable, require an employer to take all necessary steps to assure that there is not retaliation against any person who files a complaint or assists in its investigation. This includes any intimidation threat, coercion or discrimination. Please notify OFCCP immediately if any alleged attempt at retaliation is made.

Prompt Filing: All complaints must be filed within a specified umber of days following the latest occurrence of the alleged discrimination. Executive Order 11246 - 180 days; rehabilitation and Veterans Acts - 300 days. Exceptions must be approved by the Deputy Assistant Secretary.
***
[X] Ms. *** Arlene D. Rowland ***

Name and address of company you allege discriminated against you
Name Prudential, Wachovia *** One New York Plaza *** New York *** NY *** 10292
***
Mail this form to Dept. of Labor OFCCP Regional Office:
Arizona (Pacific Region) Give date(s) of the latest occurrence(s) of the alleged discriminatory act(s):
03/09/2004 03/25/2004 05/05/2004 07/03/2004

Step 1: Check the box next to the program your are filing under *** Step 2: Under the program, check what you believe to be the basis for the discrimination against your ***
[X] Executive Order 11246, as amended. This Order covers persons alleging discrimination because of race, color, religion, sex or national origin. If this is checked, your complaint will be dual-filed as a charge under Title VII of the Civil Rights Act of 1964. I believe I was (or continue to be) discriminated against because of my: ***
Sex [X] Female [X] Other Age [X] American Indian
***
[X] Section 503 of the Rehabilitation Act of 1973, as amended - This Act covers individuals with a disability,

persons with a history of physical or mental disability, and persons regarded as disabled by the employer. If this is checked, your complaint will be dual-filed as a charge under the Americans with Disabilities Act.

Basis: [X] Disability ***

Step 3: Check those actions which you believe the employer took or failed to take because of your race, color, religion, sex, national origin, disability or veteran status ***
[X] Recall [X] Wages *** [X] Harassment [X] Job Benefits *** [X] Retaliation *** [X] Accommodation to Disability *** [X] Intimidation [X] Other: Privacy, Due Process, SOX
***

1. Do you know any other employees or applicants of your group who were treated in the same way (checked above) you allege you were? [X] Yes ***
***

THE COMPLAINT
***

Complaint is against: **Prudential Equity Group, LLC** (PEG) *** **Prudential Insurance Co. of America Disability Management Services** *** **The Prudential Insurance Co. of America (Group Insurance Programs)** *** **Wachovia Corporation** *** **Wachovia Securities, LLC** ***
Complaint: **SOX Violations**

Threats, harassment, intimidation, retaliation, interfering with legal representation and due process, invasion of privacy by obtaining complete medical record. Including *** while ignoring outstanding objections to subpoenas, fraud uncovered during discovery, collusion in mediation with both employees

and possibly investors, concealing evidence, "sanitized" documents, bypassed accounting system (HARP), collusion and extortion during mediation. Report to follow.

***

SIGNATURE AND VERIFICATION

I declare under penalty of perjury that the information given above is true and correct to the best of my knowledge or belief. (A willful-false statement is punishable by law: 18 U.S.C. 1001.) ~~Hereby authorizes the release of any medical information needed for the investigation.~~

/s/Arlene D. Rowland — 07/09/2004

Signature of Complainant — Date

[Response Letter to 7/9/2004 Dept. of Labor Complaint]

U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs
71 Stevenson Street, Suite 1700 San Francisco, CA 94105

JUL 13 2004

Arlene Rowland***
Re: Complaint against **Prudential Wachovia**
Dear Ms. Rowlands:
We have received your complaint filed against **Prudential Wachovia** located in Scottsdale, Arizona. You are alleging that your were discriminated against because of your race, gender and disability. Your allegations fall within the provisions of Executive

Order 11246, as amended and Section 503 of the Rehabilitation Act of 1973, as amended.

The Office of Federal Contract Compliance Programs (OFCCP), administers the above Order, however, pursuant to a memorandum of understanding between the U.S. Department of Labor and Equal Employment Opportunity Commission, (EEOC); complaints investigated by one office will not be reinvestigated by the other office. This Memorandum was undertaken to reduce waste by limiting duplication of investigation.

Therefore, as your allegations are being investigated by the EEOC we are closing your complaint.

Sincerely, /s/ ????? K Huaga FOR WOODY GILLILAND Regional Director Pacific Region

STAMPED: RECEIVED BY EEOC NOV 18 2004
EEOC PHX LEGAL

U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs
Northeast Region 231 Varick Street, Room 750
New York, NY 10014 ***
Reply to the Attention of: II EF
September 14, 2004
***

Re: Arlene Rowland **Prudential Life Insurance Co.**
OFCCP Complaint No. I00120905
Dear Ms. Rowland:
This is to acknowledge receipt of your complaint filed against **Prudential Life Insurance Co.** under the

provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the American with Disabilities Act (ADA).

We wish to inform you that due to a Memorandum of Understanding (MOU) between the *** EEOC and the Office of Federal Contract Compliance Programs (OFCCP), complaints involving allegations of gender discrimination against one person will be processed by the EEOC, while complaints involving gender discrimination against more than one person will be processed by the OFCCP.
***

Someone from the EEOC will contact you about your complaint. The OFCCP regrets that it cannot be of further assistance to you at this time.

Sincerely, /s/ for HAROLD M. BUSCH Acting Regional Director of OFCCP Northeast Region

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U.S. Department of Labor
Occupational Safety and Health Administration
71 Stevenson Street San Francisco, California 94105
Reply to the Attention of:
REGIONAL SUPERVISORY INVESTIGATOR
December 17, 2004
***

RE: Complaint
Dear Ms. Rowland:

I am writing in reference to your written complaint received in the Office on December 17, 2004.
Your complaint references attachments that were not appended in the forward fax from the Directorate of

Enforcement Programs, Washington, D.C. Please advise the Office in writing of the precise date on which your investment account was closed and of the nature and duration of your professional relationship with Wachovia Corporation. In addition, we would appreciate a detailed and chronological accounting of your protected activities (compliance complaints) under the relevant statute and a restatement of your opinion as to why **Wachovia** has taken adverse actions against you.

Please respond to the above address no later that Thursday December 23, 2004. In the alternate you may fax you response to (415) 975-4319 (attention: Lawrence A. Ricci, Regional Supervisory Investigator).

Sincerely, /s/ LAWRENCE A. RICCI
Regional Supervisory Investigator

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Consumer Response Center **July 21, 2004**
*** **Re: FTC Ref. No. 4726887**

Dear Ms. Rowland:

This is in response to your letter dated June, 2004 to the Federal Trade Commission concerning **Prudential Insurance** and **Prudential Securities**.

In your letter, you stated that Prudential Insurance released your entire medical record without your authorization. Your also indicated that Prudential Securities is violating your privacy in an attempt to scare you with the thought that your complete medical

records will be distributed all over the place. Medical records are protected under the Fair Credit Reporting Act. Section 603(D)(i) of the Act outlines that medical information cannot be obtained without the consent of the individual to whom it relates.

The Federal Trade Commission acts in the public interest to stop business practices that violate the laws it enforces. Letters from consumers and businesses are very important to the work of the FTC. They are often the first indication of a problem in the marketplace. However, the FTC does not have congressional authority to intervene in private disputes (Section 621(2)(A) of the FCRA). Rather, its role is to identify those companies who consistently violate consumers' rights and then pursue corrective action that will benefit all consumers.

The information you provided was recorded in our complaint retention system. This computerized system enables us to identify questionable business practices that are generating numerous complaints and may be in violation of the law. Although we cannot assist you individually, we are enclosing a copy of the Fair Credit Reporting Act that further explains your rights as a consumer.

Sincerely yours,
Consumer Response Center

Enclosure: 1. Fair Credit Reporting Act

U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:04-cv-02287-EHC

Rowland v. Prudential Financial, et al
Assigned to: Judge Earl H. Carroll

Date Filed: 10/26/2004 Date Terminated: 07/02/2007
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question
Cause: 42:2000e **Job Discrimination (Employment)**
Case in other court: Ninth Circuit, 07-16358

Plaintiff **Arlene D Rowland** PRO SE

Defendants
Prudential Financial, Inc. represented by: Deborah J. Broyles, Kendra M. Forsythe, Linda Stephanie Husar, Patrick M. Ryan, Ellen M. Papadakis.
Wachovia Corporation represented by: Caroline Kathleen Larsen, Leigh Eric Dowell, Sean Keenan McElenney.

Unknown Parties TERMINATED 4/11/2005

Date Filed	#	**ARIZONA DISTRICT COURT Docket Text**
10/26/2004	1	COMPLAINT FILED (MRB) (Entered: 10/26/2004)
03/07/2005	2	MOTION to Extend Deadline (30 days) to Respond to Complaint [1-1] by dft Wachovia Corporation [2-1] (first request) (SAT) (Entered: 03/08/2005)

03/07/ 2005	3	NOTICE OF ATTORNEY APPEARANCE for dft Wachovia Corporation by L Eric Dowell and Caroline K Larsen of Bryan Cave LLP (SAT) (Entered: 03/08/2005)
03/07/ 2005	4	DECLARATION of L Eric Dowell in support of Motion to Extend Deadline (30 days) to Respond to Complaint [1-1] by dft Wachovia Corporation [2-1] by dft Wachovia Corporation (SAT) (Entered: 03/08/2005)
03/08/ 2005	5	Notice of Motion/MOTION to Extend the Time until 4/13/05 to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am [5-1] (first request)(expedited consideration requested) (SAT) (Entered: 03/09/2005)
03/08/ 2005	5	MEMORANDUM of Points and Authorities in Support Therof by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am re Motion to Extend the Time until 4/13/05 to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am [5-1] (SAT) (Entered: 03/09/2005)

03/08/ 2005	6	DECLARATION of Deborah J Broyles in Support of Notice of Motion and Motion to Extend the Time until 4/13/05 to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am [5-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am (SAT) (Entered: 03/09/2005)
03/08/ 2005	7	PROOF OF SERVICE by Federal Express of 1. Notice of Motion/MOTION to Extend the Time until 4/13/05 to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Ami; Memorandum of Points and Authorities in Support Therof; 2. Declaration of Deborah J Broyles in Support Therof; 3. [Proposed] Order Granting Notice of Motion/MOTION to Extend the Time until 4/13/05 to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am; 4. Proof of Service by Federal Express by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am (SAT) (Entered: 03/09/2005)
03/08/ 2005	8	MOTION (Application) of Attorney For Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Patrick M Ryan, atty for dft Prudential Financial [8-1] (SAT) (Entered: 03/09/2005)

03/08/2005	9	MOTION (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Deborah J Broyles, atty for dft Prudential Financial [9-1] (SAT) (Entered: 03/09/2005)
03/09/2005	10	MOTION (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Linda S Husar, atty for dft Prudential Financial [10-1] (SAT) (Entered: 03/10/2005)
03/10/2005	11	ORDER by Judge Earl H. Carroll upon Motion to Extend Deadline (30 days) to Respond to Complaint [1-1] by dft Wachovia Corporation [2-1], IT IS HEREBY ORDERED that Defendant Wachovia Corporation and non-parties Wachovia Securities LLC and Wachovia Securities Inc have until 4/13/05 to respond to Plaintiff's Complaint (cc: all counsel) (SAT) (Entered: 03/10/2005)
03/10/2005	12	ORDER FOR ADMISSION OF ATTORNEY PRO HAC VICE by Judge Earl H. Carroll that the Motion (Application) of Attorney For Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Patrick M Ryan, for dft Prudential Financial [8-1] is granted (cc: all counsel) (SAT) (Entered: 03/10/2005)

03/10/2005	13	ORDER FOR ADMISSION OF ATTORNEY PRO HAC VICE by Judge Earl H. Carroll that the Motion (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Deborah J Broyles, atty for dft Prudential Financial [9-1] is granted (cc: all counsel) (SAT) (Entered: 03/10/2005)
03/10/2005	14	ORDER by Judge Earl H. Carroll that the Motion to Extend the Time to Answer or Otherwise Respond to Plaintiff's Complaint [1-1] by dft Prudential Financial, non-party Prudential Equity, non-party Prudential Ins Co Am [5-1]; FURTHER ORDERED that Defendant Prudential Financial Inc and Non-Parties Prudential Equity Group LLC and The Prudential Insurance Company of America have until 4/13/05 to answer or otherwise respond to Plaintiff's Complaint (cc: all counsel) (SAT) (Entered: 03/10/2005)
03/10/2005		Pro Hac Vice $100 Fee Paid as to Patrick M Ryan (BAS) Modified on 04/01/2005 (Entered: 03/10/2005)
03/10/2005		Pro Hac Vice $100 Fee Paid as to Deborah J Broyles (BAS) Modified on 04/01/2005 (Entered: 03/10/2005)
03/10/2005		Pro Hac Vice $100 Fee Paid as to Linda Stephanie Husar (BAS) Modified on 04/01/2005 (Entered: 03/10/2005)
03/10/2005	15	CORPORATE DISCLOSURE STATEMENT by dft Wachovia Corporation (SAT) (Entered: 03/11/2005)

03/10/ 2005	16	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon C Gonzales for dft Prudential Financial on 2/22/05 (SAT) (Entered: 03/11/2005)
03/10/ 2005	16	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon (name illegible) for dft Wachovia Corporation on 2/22/05 (SAT) (Entered: 03/11/2005)
03/10/ 2005	16	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon R William for Wachovia Securities on 2/25/05 (SAT) (Entered: 03/11/2005)
03/10/ 2005	16	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon (name illegible) for Wachovia Legal Division on 2/22/05 (SAT) (Entered: 03/11/2005)
03/10/ 2005	16	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon Tom Sobin for Prudential Equity Group on 2/25/05 (SAT) (Entered: 03/11/2005)

03/10/2005	17	RESPONSE (Opposition) by pla to Prudential's Counsels' Motions Pending for Admission to Practice Pro Hac Vice in this Action re Motion (Application) of Attorney For Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Patrick M Ryan, atty for dft Prudential Financial [8-1], Motion (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Deborah J Broyles, atty for dft Prudential Financial [9-1], Motion (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Linda S Husar, atty for dft Prudential Financial [10-1] (SAT) (Entered: 03/11/2005)
03/11/2005	18	ORDER FOR ADMISSION OF ATTORNEY PRO HAC VICE by Judge Earl H. Carroll that the Motion (Application) of Attorney for Admission to Practice Pro Hac Vice Pursuant to LRCiv 83.1(b)(3) as to Linda S Husar, atty for dft Prudential Financial [10-1] (cc: all counsel) (SAT) (Entered: 03/11/2005)
03/14/2005	19	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE of summons/complaint upon C Gonzales for dft Prudential Financial on 2/22/05 (SAT) (Entered: 03/15/2005)
03/14/2005	19	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon (name illegible) for dft Wachovia Corporation on 2/22/05 (SAT) (Entered: 03/15/2005)

03/14/2005	19	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon (name illegible) for dft Wachovia Corporation on 2/22/05 (SAT) (Entered: 03/15/2005)
03/14/2005	19	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon Tom Sobin for Prudential Equity Group on 2/25/05 (SAT) (Entered: 03/15/2005)
03/14/2005	19	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE summons/complaint upon R William for Wachovia Securities on 2/25/05 (SAT) (Entered: 03/15/2005)
04/11/2005	20	FIRST AMENDED COMPLAINT by pla,, Jury Trial Demanded [1-1] terminating dft Unknown Parties; (SAT) (Entered: 04/12/2005)
04/13/2005	21	MOTION to Dismiss for Lack of Personal Jurisdiction by dft Wachovia Corporation [21-1] (SAT) (Entered: 04/14/2005)
04/13/2005	23	CORPORATE DISCLOSURE STATEMENT by dft Prudential Financial and non-parties' Prudential Equity Group LLc and the Prudential Insurance Company of America (SAT) (Entered: 04/14/2005)

04/13/ 2005	22	SEALED Request for Judicial Notice in Support of Defendant Prudential Financial Inc's and Non-Parties Prudential Equity Group LLC and Prudential Insurance Company of America's Motion to Dismiss or in the Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration Fed.R.Proc.12(b)(1), (4) & (6) by dft Prudential Financial Financial [24-1] (KMG) (Entered: 06/08/2005)
04/14/ 2005	24	MOTION to dismiss by dft Prudential Financial [24-1] , or in the alternative, to stay the proceedings pending ongoing arbitration by dft Prudential Financial [24-2] (SRB) (Entered: 04/15/2005)
04/14/ 2005	25	DECLARATION of Deborah J Broyles in Support of Motion to Dismiss by dft Prudential Financial [24-1], or, Alternative Motion to stay the proceedings pending ongoing arbitration by dft Prudential Financial [24-2] by dft Prudential Financial and Non-Parties Prudential Equity Group LLC and Prudential Insurance Company of America (SAT) (Entered: 04/15/2005)

04/15/ 2005	26	ERRATA by dft Prudential Financial to Notice of Motion and Motion to dismiss by dft Prudential Financial [24-1], or, alternative, Motion to stay the proceedings pending ongoing arbitration by dft Prudential Financial [24-2] (original signed Defendant Prudential Financial Inc's and Non-Parties Prudential Equity Group LLC and Prudential Insurance Company of America's Notice of Motion and Motion to Dismiss or Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration to replace the copy on file with the Court) (SAT) (Entered: 04/15/2005)
04/15/ 2005	27	ERRATA by dft Prudential Financial to Declaration of Deborah J Broyles [25-1] in Support of Motion to dismiss by dft Prudential Financial [24-1] or, alternative, Motion to stay the proceedings pending ongoing arbitration by dft Prudential Financial [24-2] (original signed Declaration of Deborah J Broyles to replace the copy filed with the Court) (SAT) (Entered: 04/15/2005)
04/15/ 2005	29	ERRATA by dft Prudential Financial to Corporate Disclosure Statements [23-1] (original signed Corporate Disclosure Statement to replace the copy on file with the Court) (SAT) (Entered: 04/15/2005)

04/15/ 2005	30	PROOF OF SERVICE by Mail by dft Prudential Financial that on 4/13/05 Defendant Prudential Financial Inc's and Non-Parties Prudential Equity Group LLC and Prudential Insurance Company of America's Notice/Motion to Dismiss or Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration, Declaration of Deborah Broyles in Support of, Request for Judicial Notice in Support of, Corporate Disclosure Statement and Proof of Service by Mail was sent to Arlene D Rowland and counsel for defendants (SAT) (Entered: 04/15/2005)
04/15/ 2005	31	PROOF OF SERVICE By Mail by dft Prudential Financial that on 4/14/05 Defendant Prudential Financial Inc's and Non-Parties Prudential Equity Group LLC and Prudential Insurance Company of America's Errata to Notice/Motion to Dismiss or Alternative Motion to Stay the Proceedings Pending Ongoing Arbitration, Errata to Declaration of Deborah Broyles in Support of, Errata to Request for Judicial Notice in Support of, Errata to Corporate Disclosure Statement and Proof of Service by Mail was sent to Arlene D Rowland and counsel for defendants (SAT) (Entered: 04/15/2005)
04/15/ 2005	28	SEALED Notice of Errata re sealed document [22-1] by dft Prudential Financial (KMG) (Entered: 06/08/2005)

04/19/2005	32	MOTION to remove Prudential's "Judicial Notice in support of dft's motion to dismiss" by pla Arlene D Rowland [32-1] , or in the alternative TO SEAL docket #22 by pla Arlene D Rowland [32-2] (SRB) (Entered: 04/20/2005)
04/21/2005	33	PROOF OF SERVICE by pla Arlene D Rowland of Motion for Judicial Notice 22 upon Dfts (LSP) Modified on 04/22/2005 (Entered: 04/22/2005)
04/25/2005	34	STIPULATION to extend time to answer complaint (amended) [20-1] to and including 6/10/05 by pla Arlene D Rowland, dft Prudential Financial, dft Wachovia Corporation [34-1] (SRB) (Entered: 04/26/2005)
04/25/2005	35	ATTORNEY APPEARANCE for pla Arlene D Rowland by Patricia Ann Kirtley (KCS) (Entered: 04/26/2005)
04/27/2005	36	ORDER by Judge Earl H. Carroll granting stipulation to extend time to answer complaint (amended) [20-1] to and including 05/31/05 by pla Arlene D Rowland, dft Prudential Financial, dft Wachovia Corporation [34-1] (cc: all counsel) (KCS) (Entered: 04/27/2005)
05/03/2005	37	SEALED EX PARTE Motion of Pla for withdrawl of counsel w/good cause and entry of appearance of Pla as Pro Se by pla Arlene D Rowland [37-1] (MAP) (Entered: 05/04/2005)

05/03/2005	38	RESPONSIVE MEMORANDUM IN OPPOSITION by pla to Motion to Dismiss for Lack of Personal Jurisdiction by dft Wachovia Corporation [21-1] (SAT) (Entered: 05/05/2005)
05/03/2005		LODGED Exhibits A-P (Exhibits A, C, D, M, N have motion to seal pending) to Responsive Memorandum in Opposition to Wachovia Corporation's Motion to Dismiss for Lack of Personal Jurisdiction Rule 12(b)(2) by pla (placed on left side of file 6/16/05) (SAT) Modified on 06/16/2005 (Entered: 05/09/2005)
05/04/2005	39	ERRATA by dft Wachovia Corporation to stipulation to extend time to answer Pla's first amended complaint (LSP) (Entered: 05/05/2005)
05/06/2005	40	SECOND AMENDED COMPLAINT by pla;; jury demand [20-1], [1-1] ; (pla is advised need motion for leave to file 2nd amended complaint, no parties added at this time to action) (DMT) (Entered: 05/09/2005)
05/06/2005	41	MOTION TO SEAL Confidential Exhibits "A", "C", "D", "M", "N" attached to Plaintiff's Responsive Memorandum in Opposition to Wachovia Corporation's Motion to Dismiss for Lack of Personal Jurisdiction by pla [41-1] (Plaintiff's Responsive Memorandum in Opposition to Wachovia Corporation's Motion to Dismiss for Lack of Personal Jurisdiction lodged and held at docket clerk's desk) (SAT) (Entered: 05/09/2005)

05/10/2005	42	MOTION for removal of erroneous 1st amended complaint from the record to be replaced with pla's 2nd amended complaint by pla Arlene D Rowland [42-1] , or, in the alternative, to amend complaint (amended) [40-1] by pla Arlene D Rowland [42-2] (KCS) (Entered: 05/11/2005)
05/11/2005	43	MOTION of Trisha Kirtley to withdraw as counsel of record with consent by pla [43-1] (Arlene Rowland, 16429 N 106th Way, Scottsdale, AZ 85255, 480-563-1552) (LCF) (Entered: 05/12/2005)
05/18/2005	44	JOINT MOTION for Rule 16 Status conference by dft Prudential Financial, dft Wachovia Corporation [44-1] (LSP) (Entered: 05/19/2005)
05/18/2005	45	RESPONSE by pla to motion to dismiss by dft Prudential Financial [24-1], motion to stay the proceedings pending ongoing arbitration by dft Prudential Financial [24-2] (DMT) (Entered: 05/19/2005)
05/25/2005	46	EXHIBITS A-O Re: response to motion to dismiss [45-1] by pla Arlene D Rowland (LSP) (Entered: 05/26/2005)
05/25/2005	47	EXHIBITS P-Z Re: response to motion to dismiss [45-1] by pla Arlene D Rowland (LSP) (Entered: 05/26/2005)

05/27/ 2005	49	NOTICE AND MOTION to Extend Time to Respond to pla's Motion for Leave to File a Second Amended Complaint by dfts Prudential Financial, and Wachovia Corporation [49-1] , to Extend time to Answer or Otherwise Respond to Pla's First Amended Complaint [20-1] by dfts Prudential Financial, and Wachovia Corporation [49-2] (KMG) (Entered: 06/02/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE Certified Mail upon dft Prudential Financial on 5/10/05 (KMG) (Entered: 06/03/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE Certified Mail upon dft Wachovia Corporation (Financial Advisors, LLC) on 5/9/05(KMG) Modified on 06/03/2005 (Entered: 06/03/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE upon Corporation Service Company by Certified Mail on 5/11/05 (KMG) (Entered: 06/03/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE by Certified Mail upon dft Wachovia Corporation (Financial Holdings) on 5/9/05 (KMG) (Entered: 06/03/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE by Certified Mail upon dft Wachovia Corporation (Wachovia Securities, LLC) on 5/13/05 (KMG) (Entered: 06/03/2005)

05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE by Certified Mail upon dft Wachovia Corporation (Wachovia Securities Financial Network LLC) on 5/10/05 (KMG) (Entered: 06/03/2005)
05/27/ 2005	51	ACCEPTANCE/ACKNOWLEDGEMENT OF SERVICE by Certified Mail upon Deborah J. Broyles and Patrick Ryan for Thelen Reid & Priest LLP on 5/13/05 (KMG) (Entered: 06/03/2005)
05/31/ 2005	48	RESPONSE by pla to motion for Rule 16 Status conference by dft Prudential Financial, dft Wachovia Corporation [44-1] (CMM) (Entered: 06/02/2005)
05/31/ 2005	50	MOTION to dismiss for lack of jurisdiction 1st amended complaint [20-1] by dft Wachovia Corporation [50-1] (DMT) (Entered: 06/02/2005)

06/03/2005	52	ORDER by Judge Earl H. Carroll granting dft Prudential Financial's Motion to stay the proceedings pending ongoing arbitration [24-2]. This case is stayed as to all counts until pla advises the Court that NASD Case No. 03-1179 has concluded. Pla shall file a status report every three months until this stay is lifted. stay deadline set for 10/3/05 case stayed as to these proceedings. FURTHER ORDERED granting dft Prudential's Request for Judicial Notice [doc.#22] and pla's "Motion to Immediately Place Under Seal Docket Twenty-Two [doc.#32-2] The Clerk shall file dft's Request for Judicial Notice (doc.#22) under seal. FURTHER ORDERED granting motion of attorney Trisha Kirtley to withdraw as counsel of record with consent by pla [43-1] (Withdrawing attorney Patricia Ann Kirtley for Arlene D Rowland) and Pla's Motion for withdrawl of counsel w/good cause and entry of appearance of Pla as Pro Se [37-1]. FURTHER ORDERED denying Pla's motion to remove Prudential's "Judicial Notice in support of dft's motion to dismiss" [32-1]. (cc: all counsel) (KMG) (Entered: 06/03/2005)
06/09/2005	53	RESPONSE by pla Arlene D Rowland to motion to dismiss for lack of jurisdiction 1st amended complaint [20-1] by dft Wachovia Corporation [50-1] (MAP) (Entered: 06/10/2005)

06/14/2005	54	MOTION for reconsideration of order #52 granting dft's motion to stay the proceedings and request for expedited scheduling by pla Arlene D Rowland [54-1] (KCS) (Entered: 06/15/2005)
06/14/2005	55	RETURN OF SERVICE EXECUTED summons/2nd amended complaint upon dft Prudential Financial on 6/7/05, Newark, NJ by certified mail (KCS) (Entered: 06/15/2005)
06/17/2005	56	MOTION for reconsideration of order (dk. 52) granting dft Prudential's request for judicial notice (dk. 22); while deying pla motion to remove Prudential's judicial notice in support of dft motion to dismiss (dk. 32) by pla [56-1] (CMM) (Entered: 06/20/2005)
06/17/2005	57	MOTION to recommence court proceedings by pla [57-1] (CMM) (Entered: 06/20/2005)
06/27/2005	58	RESPONSIVE MEMORANDUM by pla to motion to dismiss by dft Prudential Financial [24-1] (DMT) (Entered: 06/28/2005)
06/27/2005	59	CERTIFICATE of service of responsive memorandum 58-1 on dfts by pla (DMT) (Entered: 06/28/2005)
06/27/2005	60	NOTICE (styled as affidavit) by pla of service of notice on dft as to NASD Case No 03-1179 Dismissal without prejudice (DMT) (Entered: 06/28/2005)
06/28/2005	61	ATTORNEY SUBSTITUTION: terminating L Eric Dowell and substituting attorney Sean Keenan McElenney (LAD) (Entered: 06/29/2005)

07/21/2005	62	STATUS REPORT of proceedings in related NASD Arbitration Case #03-01179 by Prudential Financial and Non-Parties Purdential Equity Group, LLC and Prudential Insurance. (LSP,) (Entered: 07/22/2005)
07/21/2005	63	DECLARATION of of Deborah J. Broyles in support of 62 Status Report of Proceedings in related NASD Arbitration #03-01179 by Defendant Prudential Financial and Non-Parties Prudential Equity Group, LLC and Prudential Insurance. (LSP,) (Entered: 07/22/2005)
07/22/2005	64	SEALED ORDER granting 41 Motion to Seal . Signed by Judge Earl H. Carroll on 7/21/05. (cc: counsel of record) (SBU,) Modified on 7/22/2005 (SBU,). (Entered: 07/22/2005)
07/22/2005	65	Exhibits to Responsive memorandum by Arlene D Rowland re 38 Response to Motion (SBU,) (Entered: 07/22/2005)
07/22/2005	66	Sealed Document: Exhibits A, C, D, M, N filed by Arlene D Rowland. (SBU,) (Entered: 07/22/2005)
08/09/2005	67	Notice of NASD Case Dismissal Without Prejudice by Arlene D Rowland (LAD) (Entered: 08/09/2005)
11/10/2005	68	NOTICE of Change of Address to *** by Arlene D Rowland (TLJ,) (Entered: 11/14/2005)
11/10/2005	69	AFFIDAVIT of service regarding notice by Plaintiff Arlene D Rowland. (TLJ,) (Entered: 11/15/2005)

02/03/2006	70	NOTICE by Arlene D Rowland. (Attachments: # 1 Exhibits 1# 2 Exhibits 2# 3 Exhibits 3)(KCS,) Modified on 3/20/2006 (SBU,). MODIFIED TEXT FROM MOTION TO LIFT STAY TO NOTICE (Entered: 02/06/2006)
02/14/2006	71	STATUS REPORT by Prudential Financial re Arbitration Proceedings (MAP,) (Entered: 02/14/2006)
02/22/2006	72	STATUS REPORT by Arlene D Rowland. (Attachments: # 1 attachments)(KCS) (Entered: 02/24/2006)
03/20/2006	73	NOTICE OF CORRECTION BY THE CLERK re 70 MOTION to Lift Stay filed by Arlene D Rowland,. Description of deficiency: Incorrect document type selected. Follow up by Clerks Office: The deficiency indicated above has been addressed by the Clerk. Court use only: KCS. (SBU) (Entered: 03/20/2006)
03/29/2006	74	ORDER Setting a Status Hearing on 4/24/06 at 9:15am FURTHER ORDERED denying 57 Motionto Recommence Court Proceedings. The stay will remain in effect pending further order of the Court FURTHER ORDERED denying 44 Motion for Rule 16 Scheduling Conference FURTHER ORDERED denying 54 , 57 Motion for Reconsideration . Signed by Judge Earl H Carroll on 3/28/06. (MAP,) (Entered: 03/29/2006)

04/07/ 2006	75	APPLICATION for Entry of Default by Plaintiff Arlene D Rowland against Prudential Financial, Incorporated and Wachovia Corportation, et al. (LCF) (Entered: 04/11/2006)
04/20/ 2006	76	Remark re: 75 Application for Entry of Default as to Prudential and Wachovia; that entry of default is not appropriate at this time because the case is Stayed, and motions to dismiss are pending at dockets 24 and 50 . (KCS) (Entered: 04/20/2006)
04/20/ 2006	77	MOTION (APPLICATION) for Default Judgment as to Defendants and MOTION for Permanent Injunction by Arlene D Rowland. (MAP,) (Entered: 04/20/2006)
04/20/ 2006	78	Notice of Affidavit of Service of Subpoenas by Arlene D Rowland (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit)(DNH,) (Entered: 04/21/2006)
04/20/ 2006	79	MOTION to Amend/Correct 76 Remark (Public) by Arlene D Rowland. (DNH,) (Entered: 04/21/2006)
04/24/ 2006	80	Minute Entry for proceedings held before Judge Earl H. Carroll : Appearances: Arlene D. Rowland, pro se plaintiff, Caroline Larsen, present, and Deborah Broyles appearing telephonically, for defendants. Status Conference held on 4/24/2006. Discussion held. Order to follow. (This is a TEXT ONLY ENTRY. There is no PDF document associated with this entry.) (Court Reporter Candy Potter.) (BAH) (Entered: 04/24/2006)

04/24/2006	81	Status Notice Re: NASD Case No 03-01179 "Arlene D Rowland v Prudential Securities, Inc." by Arlene D Rowland (Attachments: # 1)(SAT) (Entered: 04/25/2006)
04/25/2006	82	TRANSCRIPT DESIGNATION AND ORDER FORM by Arlene D Rowland for proceedings held on 4/24/06 before Judge Earl H Carroll. (BAS,) (Entered: 04/25/2006)
04/28/2006	83	ORDER that the stay is lifted in this case; denying 24 Prudential's Motion to Dismiss Case, granting 49 Motion for Extension of Time, granting 49 Motion for Extension of Time to Answer, granting 21 , 50 Wachovia's Motion to Dismiss Case for Lack of Jurisdiction, denying 77 Motion for Default Judgment, denying 79 Motion to Amend/Correct. Answer will be due 10 days after Court's ruling on motion for leave to file 2nd amended complaint. . Signed by Judge Earl H Carroll on 4/27/06. (DMT,) (Entered: 04/28/2006)
05/09/2006	84	MOTION for Reconsideration re 83 Order granting dismissal of dft Wachovia Corporation by Arlene D Rowland. (Attachments: # 1 Exhibit A# 2 Exhibit Continued# 3 Exhibit B cont.# 4 Exhibit E# 5 Exhibit G# 6 Exhibit J# 7 Exhibit E (2)# 8 Exhibit M)(KCS) (Entered: 05/10/2006)
05/09/2006	85	Notice of dfts' non-compliance to Court Orders and re-assertion of dfts' default by Arlene D Rowland; re 75 Application for Entry of Default. (KCS) (Entered: 05/10/2006)

05/11/2006	86	Notice re OF NON OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT by Prudential Financial (Broyles, Deborah) (Entered: 05/11/2006)
05/11/2006	87	RESPONSE to Motion re 42 Motion for Miscellaneous ReliefMotion to Amend/CorrectMotion to Amend/Correct *Response to Plaintiff's Motion for Leave to File Second Amended Complaint* filed by Wachovia Corporation. (Larsen, Caroline) (Entered: 05/11/2006)
05/19/2006	88	Notice re OF NON-COMPLIANCE TO COURT ORDER; REASSERTION OF DEFENDANTS' DEFAULT by Prudential Financial *and for Non-Parties PRUDENTIAL EQUITY GROUP, LLP AND PRUDENTIAL INS. CO. OF AMERICA* (Broyles, Deborah) (Entered: 05/19/2006)
05/19/2006	89	TRANSCRIPT of Status Hearing Proceedings held on 4/24/06 before Judge Earl H Carroll. Court Reporter: Candy L Potter. (BAS,) (Entered: 05/22/2006)
05/23/2006	90	TRANSCRIPT DESIGNATION AND ORDER FORM by Prudential Financial for proceedings held on 4/24/2006 before Judge Earl H. Carroll. (Broyles, Deborah) (Entered: 05/23/2006)
05/24/2006	91	Notice of Pending Motion for Leave to Amend Complaint by Arlene D Rowland re 42 Motion for Miscellaneous Relief/ Motion to Amend/Correct (KMG,) (Entered: 05/30/2006)

06/05/2006	92	TRANSCRIPT DESIGNATION AND ORDER FORM by Wachovia Corporation for proceedings held on 4/24/2006 before Judge Earl H. Carroll. (Larsen, Caroline) (Entered: 06/05/2006)
06/20/2006	93	MOTION for Leave to Amend Complaint by Arlene D Rowland. (Attachments: # 1)(SBU,) (Entered: 06/22/2006)
06/20/2006	94	LODGED Proposed re: 93 MOTION to Amend/Correct; Third Amended Complaint submitted on 6/20/06. Document to be filed by Clerk if Motion to Amend is granted. filed by Arlene D Rowland (Attachments: # 1 # 2 # 3)(SBU,) (Entered: 06/22/2006)
07/03/2006	95	First MOTION for Extension of Time To Respond to Plaintiff's Motion for Leave to File a Third Amended Complaint by Prudential Financial. (Broyles, Deborah) Modified on 7/5/2006 PROPOSED ORDER NOT FILED AS AN ATTACHMENT AND INCLUDED SIGNATURE LINE, ATTORNEY NOTICED (PROPOSED ORDER LODGED AT DOCKET ENTRY #96) (REW,). (Entered: 07/03/2006)

07/03/2006	96	NOTICE OF ERRATA: LODGED Proposed Order, re: 95 First MOTION for Extension of Time To Respond to Plaintiff's Motion for Leave to File a Third Amended Complaint; Proposed Order Granting Defendant's Motion to Extend the Time to Respond to Plaintiff's Motion for Leave to File a Third Amended Complaint submitted on July 3, 2006. Document to be filed by Clerk if Motion to Amend is granted. filed by Prudential Financial (Broyles, Deborah) Modified on 7/5/2006 INCORRECT DOCUMENT TYPE SELECTED, DOCKET TEXT MODIFIED TO CORRECT DOCUMENT TYPE (REW,). (Entered: 07/03/2006)
07/05/2006	97	NOTICE TO FILER OF DEFICIENCY re 96 Lodged Proposed Document filed by Prudential Financial, 95 First MOTION for Extension of Time filed by Prudential Financial. Description of deficiency: #95 Proposed Order to be filed as an Attachment to motion and not include signature line; #96 incorrect document type selected. (REW,) (Entered: 07/05/2006)
07/06/2006	98	ORDER granting 95 Motion for Extension of Time. Defendant and Movants are granted an extension of time to respond to Plaintiff's motion for leave to file a third amended complaint until July 31, 2006. Signed by Judge Earl H Carroll on 07/05/06. (KCS) (Entered: 07/06/2006)

07/06/2006	99	RESPONSE to Motion re 93 MOTION to Amend/Correct *Third Amended Complaint* filed by Wachovia Corporation. (Larsen, Caroline) (Entered: 07/06/2006)
07/26/2006	100	Notice by Arlene D Rowland re Waiver of Service of Summons re Third Amended Complaint (SBU,) (Entered: 07/27/2006)
07/27/2006	101	ORDER that Defendant Prudential Financial, Inc., and Nonparties Prudential Equity Group, LLC, Prudential Insurance Company of America, and Thomas Zirbel are granted an extension of time to respond to Plaintiff's motion for leave to file a third amended complaint until August 7, 2006. Signed by Judge Earl H Carroll on 7/27/06. (LCF) Modified on 9/14/2006 (LCF). DOCUMENT TEXT MODIFIED TO CORRECT DOCUMENT LINKAGE. (Entered: 07/27/2006)
08/07/2006	102	Notice re PRUDENTIAL DEFENDANTS' NOTICE OF JOINDER TO WACHOVIA DEFENDANTS' RESPONSE AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT by Prudential Financial (Broyles, Deborah) (Entered: 08/07/2006)
09/12/2006	103	NOTICE of Change of Address by Arlene D Rowland to *** (KCS) (Entered: 09/12/2006)

09/14/2006	104	NOTICE OF CORRECTION BY THE CLERK re 101 Order on Motion to Amend/Correct. Description of deficiency: Docket text modified to correct document linkage. Follow up by Clerks Office: The deficiency indicated above has been addressed by the Court. Court use only: LCF. (LCF) (Entered: 09/14/2006)
09/14/2006	105	ORDER - IT IS ORDERED denying Plaintiff's 84 Motion for Reconsideration; FURTHER ORDERED denying without prejudice Plaintiff's 77 Motion for Permanent Injunction; FURTHER ORDERED denying without prejudice Plaintiff's 42 Motion for Leave to file Second Amended Complaint. The Court will rule on Plaintiff's pending 93 Motion for Leave to File Third Amended Complaint by separate order . Signed by Judge Earl H Carroll on 9/14/06. (SAT) (Entered: 09/14/2006)
11/27/2006	106	Notice re Notice of Law Firm Name Change by Prudential Financial (Broyles, Deborah) (Entered: 11/27/2006)
12/07/2006	107	MOTION for Court Action Civil Procedure Compliance re: Substitution of Counsel as to Defendants by Arlene D Rowland. (DNH) (Entered: 12/07/2006)
12/08/2006	108	MOTION for Status of pending motions by Arlene D Rowland. (DNH) (Entered: 12/11/2006)

12/13/2006	110	APPLICATION for Entry of Default by Plaintiff Arlene D Rowland against Prudential Financial, Inc. et al, non-dismissed Wachovia Corporation business entities and Thomas Norman Zirbel. (Attachments: # 1 Exhibit)(DNH) (Entered: 12/18/2006)
12/14/2006	109	ORDER denying without prejudice 93 Plaintiff's Motion to Amend/Correct. Signed by Judge Earl H Carroll on 12/13/06.(TLJ) (Entered: 12/14/2006)
12/18/2006	111	MOTION for Status of Pending Motion by Arlene D Rowland. (DNH) (Entered: 12/20/2006)
12/18/2006	112	CERTIFICATE OF SERVICE by Arlene D Rowland (DNH) (Entered: 12/20/2006)
12/18/2006	113	APPLICATION for Entry of Default by Plaintiff Arlene D Rowland against Prudential Financial, Inc. et al, non-dismsised Wachovia Corporation buisness entities; and Thomas Norman Zirbel. (Attachments: # 1 Exhibit)(DNH) (Entered: 12/20/2006)
12/22/2006	114	RESPONSE re 113 Application for Entry of Default by Defendant Wachovia Corporation. (Larsen, Caroline) (Entered: 12/22/2006)
12/26/2006	115	MOTION for Extension of Time Defendant's Notice of Motion and Motion to Extend the Time to Respond to Plaintiff's First Amended Complaint (First Request) (Expedited Consideration Requested) by Prudential Financial. (Broyles, Deborah) (Entered: 12/26/2006)

12/27/ 2006	116	ORDER granting 115 Motion for Extension of Time. IT IS ORDERED that Dft Prudential Financial shall respond to Pla's First Amended Complaint on or before 01/29/07. Signed by Judge Earl H Carroll on 12/26/06.(DNH) (Entered: 12/27/2006)
12/29/ 2006	117	OBJECTION to 116 Order granting Defendant's Motion for Extension of Time by Plaintiff Arlene D Rowland. (Attachments: # 1 Exhibit)(DNH) (Entered: 12/29/2006)
01/08/ 2007	118	MOTION for Joinder of Persons Needed for Just Adjudication by Arlene D Rowland. (DNH) (Entered: 01/09/2007)
01/08/ 2007	119	SUPPLEMENT to 117 Objection by Plaintiff Arlene D Rowland. (Titled Plaintiff's Supplement to Application for Entry of Default Against Defendants) (DNH) (Entered: 01/09/2007)
01/10/ 2007	120	Notice of MOTION to Add Wachovia Corporation to Plaintiff's First Amended Complaint by Arlene D Rowland. (DNH) (Entered: 01/12/2007)
01/12/ 2007	121	MOTION for Admission Pro Hac Vice as to attorney Kendra Forsythe on behalf of Prudential Financial. (BAS,) (Entered: 01/16/2007)

01/16/ 2007	122	ORDER pursuant to General Order 05-25 granting 121 Motion for Admission Pro Hac Vice.Per the Court's Administrative Policies and Procedures Manual, applicant has five (5) days in which to register as a user of the Electronic Filing System. Registration to be accomplished via the court's website at www.azd.uscourts.gov. (BAS,)(This is a TEXT ENTRY ONLY. There is no.pdf document associated with this entry.) (Entered: 01/16/2007)
01/29/ 2007	123	RESPONSE to Motion re 120 MOTION for *Joinder and Motion to Add Wachovia Corporation to Plaintiff's First Amended Complaint* filed by Wachovia Corporation. (Larsen, Caroline) (Entered: 01/29/2007)
01/29/ 2007	124	MOTION to Dismiss Case *Notice of Motion and Motion to Dismiss* by Prudential Financial. (Broyles, Deborah) (Entered: 01/29/2007)
01/30/ 2007	125	RESPONSE to Motion re 118 MOTION for Joinder of Persons Needed for Just Adjudication *Prudential Equity Group and Prudential Insurance Co. of America's Opposition to Plaintiff's Motion for Joinder of Person's Needed for Just Adjudication* filed by Prudential Financial. (Broyles, Deborah) (Entered: 01/30/2007)
02/07/ 2007	126	Plaintiff's REPLY to Defendants' Response to 120 MOTION to Add Party, and 118 MOTION for Joinder of Persons Needed for Just Adjudication filed by Arlene D Rowland. (DNH) (Entered: 02/08/2007)

02/09/2007	127	MOTION for Entry of Default as to Prudential Financial, Inc.; MOTION for Preclusion of Defenses and Motion for Award of Expenses by Arlene D Rowland. (DNH) (Entered: 02/12/2007)
02/22/2007	128	MOTION to Strike Prudential's Rule 12(b)(6) Dismissal Motion 124 ; Demand for Specific Issue Jury Trial by Arlene D Rowland. (Attachments: # 1 Exhibit)(DNH) (Entered: 02/23/2007)
02/22/2007	129	REQUEST for status of Plaintiff's Motion 56 for Reconsideration of Order (Titled Pending Motion Notification) by Plaintiff Arlene D Rowland. (DNH) (Entered: 02/23/2007)
02/22/2007	130	NOTICE OF MOTION AND MOTION to Unseal Document 52 by Arlene D Rowland. (DNH) (Entered: 02/23/2007)
02/27/2007	131	Notice re Notice of Motion and Motion to Extend The Time to Respond to Plaintiff's Motion to Strike Prudential's Rule 12(b)(6) Dismissal Motion by Prudential Financial (Broyles, Deborah) (Entered: 02/27/2007)
03/05/2007	133	Notice to the Court by Arlene D Rowland re 127 MOTION for Entry of Default as to Prudential Financial, Inc. MOTION for Preclusion of Defenses and Award of Expenses (Attachments: # 1 Exhibit)(DNH) (Entered: 03/07/2007)
03/05/2007	134	RESPONSE and Objection to 131 Defendants' Request for Extension of Time by Plaintiff Arlene D Rowland. (DNH) (Entered: 03/07/2007)

03/07/2007	132	ORDER granting 131 Motion to Extend The Time to Respond to Plaintiff's Motion to Strike Prudential's Rule 12(b)(6) Dismissal Motion filed by Prudential Financial. IT IS ORDERED that Defendant and Movants shall have up to and including 04/06/07 to file a Response to Plaintiff's Motion to Strike Prudential's Rule 12(b)(6) Dismissal Motion. Signed by Judge Earl H Carroll on 03/07/07. (DNH) (Entered: 03/07/2007)
04/06/2007	135	Defendant Prudential Financial, Inc.'s and Non-Parties Prudential Equity Group, LLC and Prudential Insurance Company of America's Opposition to Plaintiff's Motion to Strike by Prudential Financial. (Broyles, Deborah) Modified on 4/9/2007 (DNH,). DOCKET TEXT MODIFIED TO REMOVE THE TEXT MOTION TO STRIKE. (Entered: 04/06/2007)
04/06/2007	136	REQUEST *for Judicial Notice in Support of Defendant Prudential Financial, Inc.'s and Non-Parties Prudential Equity Group, LLC's, and Prudential Insurance Company of America's Opposition to Plaintiff's Motion to Strike* by Defendant Prudential Financial. (Broyles, Deborah) (Entered: 04/06/2007)
04/06/2007	137	DECLARATION *of Deborah J. Broyles in Support of Defendant Prudential Financial, Inc.'s and Non-Parties Prudential Equity Group, LLC. and Prudential Insurance Company of America's Opposition to Plaintiff's Motion to Strike* by Defendant Prudential Financial. (Broyles, Deborah) (Entered: 04/06/2007)

04/09/2007	138	NOTICE TO FILER OF DEFICIENCY re 135 MOTION to Strike *Defendant Prudential Financial, Inc.'s and Non-Parties Prudential Equity Group, LLC and Prudential Insurance Company of America's Opposition to Plaintiff's Motion to Strike* filed by Prudential Financial. Description of deficiency: Incorrect event selected. (DNH) (Entered: 04/09/2007)
04/16/2007	139	Notice re Civil Cover Sheet by Prudential Financial *Civil Cover Sheet* (Broyles, Deborah) Modified on 4/16/2007 (DNH,). DOCUMENT FILED IN ERROR. ATTORNEY REFILED DOCUMENT IN CORRECT CASE. (Entered: 04/16/2007)
04/16/2007	140	Notice re Notice of Application to Confirm Award by Prudential Financial (Broyles, Deborah) Modified on 4/16/2007 (DNH,). DOCUMENT FILED IN ERROR. ATTORNEY FILED DOCUMENT IN CORRECT CASE. (Entered: 04/16/2007)
04/16/2007	141	NOTICE TO FILER OF DEFICIENCY re 139 Other Notice filed by Prudential Financial, 140 Other Notice filed by Prudential Financial. Description of deficiency: Documents entered in incorrect case. (Documents have been entered in correct case by the attorney) (DNH) (Entered: 04/16/2007)
05/21/2007	142	NOTICE of Change of Address by Arlene D Rowland (DNH) (Entered: 05/23/2007)

07/02/2007	143	ORDER denying 107 Motion for Court Action. IT IS FURTHER ORDERED granting 108 Motion for status and 111 Motion for pending motion notification to the extent of this Order. IT IS FURTHER ORDERED denying 118 Motion for Joinder. IT IS FURTHER ORDERED denying 120 Motion to add Wachovia Corporation. IT IS FURTHER ORDERED granting Movants' 124 Motion to Dismiss Case and DIMISSING the first Amended Complaint as to Dft Prudential Financial, Inc. IT IS FURTHER ORDERED denying as moot 127 Plaintiff's Motion for Entry of Default and 127 Motion for Preclusion of Defenses and Award of Expenses. IT IS FURTHER ORDERED treating 128 Motion to Strike as Response to Movants' Motion to Dismiss and treating Movants' Opposition to Pla's 135 MOTION to Strike as a Reply to Movants' Motion to Dismiss. IT IS FURTHER ORDERED that Dft Prudential's 136 Request for Judicial Notice as to Exhibit T is GRANTED. IT IS FURTHER ORDERED denying 130 Motion to Unseal Document as legally frivolous. The Court having denied Pla's Motion for Joinder 118 , Motion to Add Wachovia Corporation 120 , and Motion for Relief 120 and having dismissed all Defendants, IT IS FURTHER ORDERED that the Clerk enter judgment accordingly. Signed by Judge Earl H Carroll on 07/02/07.(DNH,) (Entered: 07/02/2007)

07/02/2007	144	CLERK'S JUDGMENT in favor of Prudential Financial, Wachovia Corporation against Arlene D Rowland: that pursuant to the Courts order filed July 2, 2007, judgment is entered in favor of defendant and against plaintiff. Plaintiff to take nothing, and complaint and action are dismissed. (DNH) (Entered: 07/02/2007)
07/23/2007	145	NOTICE OF APPEAL to 9th Circuit, as to 83 Order on Motion to Dismiss Case; 116 Order on Motion for Extension of Time; 109 Order on Motion to Amend/Correct; 144 Clerk's Judgment; 105 Order on Motion for Miscellaneous Relief and 52 Order by Arlene D Rowland. (DNH) (Entered: 07/25/2007)
07/25/2007		USCA Appeal Fees received $ 455 receipt number PHX060283 re 145 Notice of Appeal filed by Arlene D Rowland (DNH) (Entered: 07/25/2007)
07/25/2007	146	Notice of Appeal Notification Form; Notice of Appeal and copy of docket sheet transmitted to Ninth Circuit and all parties re 145 Notice of Appeal (DNH) (Entered: 07/25/2007)
08/06/2007	147	Ninth Circuit Case Number 07-16358 for 145 Notice of Appeal. (DNH) (Entered: 08/06/2007)
08/16/2007	148	Appeal Document: Notice Regarding Transcripts Re: 10 day notice by Arlene D Rowland re 145 Notice of Appeal, (Attachments: # 1 Exhibit 82# 2 Errata 89# 3 Exhibit 90# 4 Errata 92# 5 Exhibit 145)(DNH) (Entered: 08/17/2007)

05/23/2008	149	Transmitted Record on Appeal to 9th Circuit re 145 Notice of Appeal. Number of Volumes of Clerks Records: 2; Number of Bulky Documents: 3; Docket Numbers of Bulky Documents: 46, 47, 65; Number of Transcripts: 1; Docket Numbers of Transcripts: 89; Number of Expandos: 2; Other: 1 Folder SEALED documents, 1 SEALED volume in 1 SEALED expando. (DNH) Modified on 6/5/2008 TO CLARIFY RECORDS SENT (REW,). (Entered: 05/23/2008)
09/25/2008	150	Acknowledgment of Receipt of Record on Appeal from 9th Circuit re 145 Notice of Appeal. (LSP) (Entered: 09/29/2008)
02/03/2010	151	ORDER of 9th Circuit, granting appellant's request for extension of time; the petitionfor panel rehearing and petition for rehearing en banc are due on February 24, 2010; appeal case number 07-16358, as to 145 Notice of Appeal, filed by Arlene D Rowland (DMT) (Entered: 02/03/2010)
03/17/2010	152	MANDATE of 9th Circuit (Certified Copy), AFFIRMING the decision of the district court, case number 07-16358, as to 145 Notice of Appeal, filed by Arlene D Rowland (Attachments: #(1) Order, #(2) Memorandum, #(3) nda)(KMG) (Entered: 03/17/2010)
03/18/2010	153	MOTION to Stay Enforcement of Judgment with Memorandum by Arlene D Rowland. (TLJ) (Entered: 03/19/2010)

03/23/2010	154	Appeal Record Returned: 145 Notice of Appeal; Number of Volumes of Clerk's Record: 2; Number of Bulky Documents: 3; Docket Numbers of Bulky Documents: 46, 47, 65; Number of Transcripts: 1; Docket Number of Transcript: 89; Number of Expandos: 2; Other: 1 Folder SEALED documents, 1 SEALED volume in 1 SEALED expando. (REW) (Entered: 03/23/2010)
04/05/2010	155	ORDER that Dfts shall file a Response to Pla's 153 Motion to Stay Enforcement of Judgment within 14 days of the date of this Order. Signed by Judge Earl H Carroll on 04/05/10. (ESL) (Entered: 04/05/2010)
04/19/2010	156	RESPONSE in Opposition re 153 MOTION to Stay re Enforcement of Judgment filed by Prudential Financial, Inc.. (Broyles, Deborah) (Entered: 04/19/2010)
04/20/2010	157	RESPONSE in Opposition re 153 MOTION to Stay re Enforcement of Judgment *AMENDED OPPOSITION TO APPLICATION TO STAY ENFORCEMENT OF JUDGMENT* filed by Prudential Financial, Inc.. (Broyles, Deborah) (Entered: 04/20/2010)
05/21/2010	158	ORDER denying 153 Plaintiff's Motion to Stay. Signed by Judge Earl H Carroll on 5/19/10.(TLJ) (Entered: 05/21/2010)

U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:04-cv-02287-EHC
[END OF DISTRICT COURT CIVIL DOCKET]

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